

EXHIBIT 65

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 THOMSON REUTERS ENTERPRISE CENTRE)
4 GmbH et al.,)
5 -----Plaintiffs,) Case No.
6 vs.) 20-CV-613-SB
7 ROSS INTELLIGENCE INC.,)
8 -----Defendant.)

9 TRANSCRIPT OF PRETRIAL CONFERENCE

10
11 PRETRIAL CONFERENCE had before the Honorable
12 Stephanos Bibas, U.S.D.C.J., in Courtroom 2B on the 6th of
13 August, 2024.

14
15 APPEARANCES

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18 -and-

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(Appearances continued.)

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-and-

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JOACHIM STEINBERG, ESQ.

Counsel for Defendant

1 THE COURT: So we're here in Thomson Reuters
2 Enterprise versus ROSS Intelligence 20613. Counsel for
3 Plaintiffs, please enter your appearances.

4 MR. TIGAN: Good afternoon, Your Honor. Jeremy
5 Tigan with Morris Nichols here in Wilmington for the
6 plaintiffs. I'm joined by five of my colleagues from
7 Kirkland & Ellis today. I have Dale Cendali, Joshua
8 Simmons, Miranda Means, Yungmoon Chang, and Eric Loverro
9 with me, and depending on the issue discussed, you may hear
10 from variation combinations of them.

11 THE COURT: Mr. Tigan, are you going to take the
12 lead on the general admin issues?

13 MR. TIGAN: Yes, I'm happy to discuss that when
14 Your Honor is ready.

15 THE COURT: Very good. Thank you.

16 And for Defendant.

17 MR. MOORE: Good afternoon, Your Honor. David
18 Moore from Potter Anderson here in Wilmington joined by my
19 colleagues from Crowell & Moring Warrington Parker, Joachim
20 Steinberg, and Keith Harrison.

21 THE COURT: Good afternoon to you all.

22 And, Mr. Moore, are you going to be handling
23 the --

24 MR. MOORE: I'm happy to, but I think Mr. Parker
25 planned to handle that.

1 we did it.

2 THE COURT: The idea of focusing in on each
3 possible element of defense, whether there's certain things
4 copyrighted or not, a lot of intuitive sense in guiding the
5 jury step by step. It's figuring out the mechanics how we
6 group and cluster head notes so they can consider them as
7 batches.

8 MR. SIMMONS: Your Honor, if I may.

9 THE COURT: Yes.

10 MR. SIMMONS: I'm happy to reserve argument on
11 the verdict form because, as you can imagine, we don't agree
12 with the approach. If you want to hear argument on it now,
13 I'm happy to walk through it.

14 THE COURT: Sure.

15 MR. SIMMONS: One of the major issues here is it
16 doesn't actually follow the way that the Copyright Act and
17 copyright law works in terms of they talk about the validity
18 of the head note, the validity of a copyrighted head note.

19 That's not the proper test. The question is, is there
20 validity of the work, which is Westlaw.

21 The way our verdict form works, it starts with
22 that presumption, which is the copyrighted work is Westlaw
23 and then there's infringement of the head notes as the
24 subsidiary question. There's a concern I have going through
25 this, and I don't think we have time to do it. We have

1 antitrust lawyers coming to do that.

2 MS. CENDALI: We're pretty confident our
3 antitrust lawyers would not like us to argue.

4 THE COURT: I want to thank the parties for the
5 professional and efficient way you managed to keep this
6 moving ahead. I'm grateful that we've got agreement on a
7 number of things. We're working towards agreement on the
8 rest. I will await Mr. Parker's update about is it
9 Dr. Marks, not Dr. Morris, and hopefully we'll learn some
10 more and hoping for some good news later this week.

11 MR. PARKER: Understood. Thank you.

12 THE COURT: Wonderful. This Court stands
13 adjourned.

14
15 C E R T I F I C A T E

16 I, Deanna L. Warner, a Registered Professional
17 Reporter, do hereby certify that as such Registered
18 Professional Reporter, I was present at and reported in
19 Stenotype shorthand the above and foregoing proceedings.

20
21 

22 Deanna L. Warner, RPR, CSR
23 Official Court Reporter
24 U.S. District Court
25

EXHIBIT 66



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THOMSON REUTERS ENTERPRISE CENTRE GMBH AND WEST PUBLISHING CORPORATION

v.

ROSS INTELLIGENCE INC.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Civil Action No. 1:20-cv-00613-SB

REBUTTAL EXPERT REPORT OF JAMES E. MALACKOWSKI

September 6, 2022

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1 ASSIGNMENT

This report is designated as containing Highly Confidential - Attorneys' Eyes Only information under the Protective Order stipulated in this matter, as specified in the footer on each page.¹ This report is to be used only for the purpose of this litigation. No part of this report may be published or used for any other purpose without written consent.

Ocean Tomo, LLC ("Ocean Tomo") was retained by counsel for Thomson Reuters Enterprise Centre GmbH ("Thomson Reuters") and West Publishing Corporation ("West") (collectively, "Plaintiffs"). On August 1, 2022, the Expert Report of James E. Malackowski² (the "Malackowski Report") was issued regarding the amount and form of compensation related to the allegations made by Plaintiffs of copyright infringement of its West Key Number System ("WKNS") and its West Headnotes (collectively, "Westlaw Content"), as well as the allegations of tortious interference with contract, by ROSS Intelligence Inc. ("ROSS"). My opinions in this rebuttal report supplement the opinions expressed in the Malackowski Report and attached schedules regarding the appropriate form and amount of compensation to Plaintiffs assuming there is a finding of liability on the part of ROSS.

On August 1, 2022, the Expert Report of Alan J. Cox, Ph.D.³ was issued. This report addressed the four factors of fair use of a copyrighted work,⁴ with particular focus on the fourth fair use factor. I have been asked to respond to Dr. Cox's opinions and analysis in this rebuttal report. As discussed in detail in this report, Dr. Cox mischaracterizes the facts regarding the use of Plaintiffs' copyrighted materials by Plaintiffs and as allegedly infringed by ROSS. As a result, it is my opinion that the opinions expressed by Dr. Cox in his August 1, 2022 report are not a reliable basis for analyzing the fourth fair use factor, or other of the fair use factors. In contrast to the opinions of Dr. Cox, it is my opinion that the benefits and value to Plaintiffs of exclusive rights to Westlaw Content would be impaired if competing legal research platforms could freely copy Westlaw Content to train their legal research platforms without paying appropriate compensation to Plaintiffs.

My qualifications, experience, compensation and curriculum vitae were provided in the Malackowski Report and have not been duplicated in this rebuttal report. A listing of documents considered by Ocean Tomo in connection with this litigation are presented in Appendix B - Rebuttal attached to this rebuttal report. In addition to the documents listed on Appendix B - Rebuttal, I interviewed Dr. Jonathan Krein. As stated in the Malackowski Report, no part of Ocean Tomo's compensation depends on the outcome of this litigation.

¹ Stipulated Protective Order, May 13, 2021.

² Expert Report of James E. Malackowski, August 1, 2022.

³ Expert Report of Alan J. Cox, Ph.D., August 1, 2022.

⁴ 17 U.S.C. § 107.



2 SUMMARY OF OPINIONS

My opinions and analyses in the Malackowski Report are provided for use by the Court in determining the appropriate compensation, if any, to Plaintiffs assuming there is a finding of liability on the part of ROSS under the copyright infringement claim and/or the tortious interference with contract claim asserted by Plaintiffs against ROSS. My opinions on the appropriate compensation to Plaintiffs in this matter has not changed since the issuance of the Malackowski Report.

This rebuttal report provides my assessment of and response to the opinions of Dr. Cox as expressed in his August 1, 2022 regarding the “fourth [fair use of copyrighted material] factor, [which evaluates] the impact of the alleged copying of Westlaw Content by ROSS upon the market for the copyrighted work,”⁵ and the other fair use factors as addressed in Dr. Cox’s report.

2.1 Summary of Rebuttal Opinions

As summarized in this section, and presented in detail in the following sections of this rebuttal report, it is my opinion that Dr. Cox’s opinions as stated in his August 1, 2022 report are not founded in the facts of this case and, as a result, are not a reliable basis for analyzing the fourth fair use factor, or the other fair use factors. My critiques of Dr. Cox’s analyses and opinions focus on four topics, encompassing Dr. Cox’s 14 opinions, as stated in his August 1, 2022 report.

2.1.1 ROSS’s Purpose for Westlaw Content Use is the Same as Plaintiffs’ Purpose

Dr. Cox’s report does not acknowledge the full extent of Plaintiffs’ use of Westlaw Content as AI training data for Westlaw Next and Westlaw Edge, instead focusing only on Plaintiffs’ use of Westlaw Content as AI training data for the natural language search function in Westlaw Edge called WestSearch Plus. Dr. Cox attempts to incorrectly distinguish ROSS’s use of Westlaw Content as AI training data for its legal research platform from Plaintiffs’ use of Westlaw Content for the same purpose. Both Plaintiffs and ROSS used Westlaw Content for the purpose of developing training data for their respective AI-driven legal research platforms.

Dr. Cox focuses on the use of Westlaw Content by West subscribers for conducting legal research instead of Plaintiffs’ use of Westlaw Content for training the search algorithms of its legal research platforms. Benefits of Westlaw Content facilitating legal research by West subscribers does not alter the fact that West subscribers also benefit from Plaintiffs’ use of Westlaw Content in developing quality search functionality for its legal research platforms.

Section 5 of this report provides details on ROSS’s and Plaintiffs’ use of Westlaw Content to develop AI training data and compares the use for this purpose by ROSS and Plaintiffs. Section 5 also provides details regarding the extent of ROSS’s use of Westlaw Content.

⁵ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 19.



2.1.2 ROSS's Legal Research Platform Created as Substitute for Westlaw

Dr. Cox attempts to show that ROSS's legal research platform is based on a different approach than Plaintiff's platform, and as a result would attract a different type of subscriber than those interested in Plaintiffs' legal research platforms. Dr. Cox fails to acknowledge that ROSS's legal research platform was developed to be a substitute for Westlaw and it was ROSS's goal to take subscribers from Westlaw and other competitors such as LexisNexis.

Section 6 presents facts regarding ROSS's use of the Bulk Memos to develop training data that allowed ROSS to compete with Plaintiffs' legal research platforms, and those of others. Section 6 also discusses other critiques of Dr. Cox's opinions regarding the differences between the legal research platforms of ROSS and Plaintiffs that Dr. Cox suggests indicate that the legal research platforms of ROSS and Plaintiffs did not compete. For example, although Dr. Cox claims that ROSS's legal research platform is superior to that of Plaintiffs, he does not provide examples of points of law that the ROSS legal research platform provides to legal researchers that are missed in, or are substantially different from, the points of law on Plaintiffs' legal research platform.

2.1.3 ROSS's Alleged Copying Does Not Benefit Plaintiffs or the Public

Dr. Cox opines that ROSS's use of Westlaw Content may have increased the value of Westlaw Content, benefiting Plaintiffs. In addition, according to Dr. Cox, the legal research platform developed by ROSS using AI training data developed with Westlaw Content provides a public benefit by lowering the cost of legal research. Section 7 of this report discusses the lack of support for these opinions offered by Dr. Cox.

2.1.4 Potential Market for Westlaw Content

I understand that Dr. Cox relies on an inaccurate representation of the fourth fair use factor as being a requirement for the copyright owner to actually use or intend to use its allegedly infringed copyrighted materials in establishing a market reflecting the alleged use of the copyrighted materials by the defendant. Section 8 of this report discusses reasons that Dr. Cox's opinions regarding the lack of a market for the copyrights at issue are not supportable.

As discussed in Section 8, an accurate analysis the potential market for Westlaw Content supports my conclusion in the Malackowski Report that there is a potential market for the Plaintiffs' copyrighted information for developing AI training data sets, if Plaintiffs were to elect to license Westlaw Content as training data for legal research platforms. It is my opinion that if unauthorized free use of Westlaw Content is allowed, the value of a license to Westlaw Content would be substantially impaired, as would the benefits and value to Plaintiffs of exclusive rights to Westlaw Content as AI training data for its own legal research platform. Plaintiffs would be forced to compete with legal research platforms trained with free access to Westlaw Content while Plaintiffs continue to invest in developing and improving Westlaw Content.

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2.2 Bases for Opinions and Analyses

The bases for my opinions and analyses are discussed within the body of my report. The opinions and analyses discussed throughout this report are based on my current understanding of the facts and circumstances surrounding this matter, my review of the produced documentation, testimony, and third-party information available to date and my experience and training. The opinions and analyses described in my report are subject to change based upon additional discovery or other developments. If additional information becomes available in this matter, I plan to review the information and prepare a supplemental report, if appropriate and allowed by the Court.

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3 FAIR USE

For my analysis, I have considered the U.S. statute on fair use of a copyrighted work, as well as federal case law on fair use.

As stated in 17 U.S.C. § 107 – Limitations on Exclusive Rights: Fair Use:⁶

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

It is my understanding that in assessing the fourth fair use factor, courts consider the effect of the infringing use on the market for or value of the original work, as well as “harm to the market for derivative works.”⁷ Courts have found that “as a general matter, a copyright holder is entitled to demand a royalty for licensing others to use its copyrighted work” and that “the impact on potential licensing revenues is a proper subject for consideration in assessing the fourth factor.”⁸ Courts specifically look at the impact on revenues for “traditional, reasonable, or *likely to be developed markets*.” (emphasis added)⁹ As a result, while it is my opinion that Plaintiffs incurred actual damages as a result of ROSS’s use of the Westlaw Content, as discussed in the Malackowski Report, I also understand that “[a]ctual present harm need not be shown” in the fair use analysis, as long as

⁶ 17 U.S.C. § 107.

⁷ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994); *Cable/Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829, 844 (11th Cir. 1990).

⁸ *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 929 (2d Cir. 1994).

⁹ *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 930 (2d Cir. 1994).

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there is an effect on the potential market for the work.¹⁰ For example, a court found a defendant's assertion of fair use should not be upheld, even where a plaintiff did not itself license the copyrighted work and had no present intention to do so.¹¹ In addition, I understand that in assessing the fourth fair use factor, courts look not just at the particular actions of the specific infringers in a case, but also to "whether unrestricted and widespread conduct of the sort engaged in by the defendant...would result in a substantially adverse impact on the potential market for the original."¹²

¹⁰ Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 450-51 (1984); Worldwide Church of God v. Phila. Church of God, Inc., 227 F.3d 1110, 1119 (9th Cir. 2000); Ringgold v. Black Ent. Television, Inc., 126 F.3d 70, 81 (2d Cir. 1997); Castle Rock Ent., Inc. v. Carol Publ'g Grp., Inc., 150 F.3d 132, 136, 145-46 (2d Cir. 1998).

¹¹ *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164 (9th Cir. 2012).

¹² *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 821 (9th Cir. 2002).

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4 SUMMARY OF THE FAIR USE OPINIONS OF DR. COX

Dr. Cox states that his August 1, 2022 report is “directed to the fourth [fair use of copyrighted material] factor, the impact of the alleged copying of Westlaw Content by ROSS upon the market for the copyrighted work. Put another way, [Dr. Cox has] been asked to determine whether the LegalEase Memos,¹³ and ROSS’s use of the LegalEase Memos, had an impact on the potential markets for or value of the Westlaw Content.”¹⁴ Dr. Cox also addresses the other fair use factors in his report, but states that he does “not offer[] an opinion about the extent to which these other factors weigh in favor of a finding of fair use.”¹⁵

Dr. Cox summarizes his opinions in 14 bullet points.¹⁶ Dr. Cox’s opinions generally relate to five topics:

- Dr. Cox opines that “Westlaw Content is used in very different ways by Plaintiffs compared to ROSS.”¹⁷ Dr. Cox focuses on the use of West Headnotes and WKNS by Plaintiffs’ customers in performing legal research, a feature Dr. Cox states is not used by subscribers of the ROSS legal research platform.¹⁸ He contrasts this “interactive use” of Westlaw Content by Plaintiffs’ subscribers to ROSS’s use of “Westlaw Content as a particular component of its training material for an Artificial Intelligence Program.”¹⁹
- Dr. Cox opines that “ROSS’s use of the Westlaw Content did not have a negative impact on the value of Westlaw Content to persons who attach importance to the Interactive use of Westlaw Content.”²⁰ He attempts to draw distinctions between how the two platforms function and minimize the similarities between them.
- Dr. Cox opines that ROSS expanded the legal research platform market by providing an alternative at “a much lower cost than Plaintiffs.”²¹ This opinion ignores that the ROSS legal research platform is alleged to have been developed through infringement of Plaintiffs’ copyrighted materials, in which Plaintiffs have made a considerable investment, as discussed in the Malackowski Report.²²
- Dr. Cox opines that the use of West Headnotes “could not have had an impact on the market for or value of the Answer Components use of headnotes” because there is no actual or

¹³ The Rebuttal Report refers to the memos that LegalEase prepared in the Bulk Memo Project for ROSS as Bulk Memos, consistent with the Malackowski Report.

¹⁴ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 19.

¹⁵ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 19.

¹⁶ Rebuttal Schedule 1.0.

¹⁷ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 5.

¹⁸ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 36.

¹⁹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 5.

²⁰ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 6.

²¹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 8.

²² Expert Report of James E. Malackowski, August 1, 2022, pp. 34-35, 39.

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intended market for West Headnotes “as Answer Components in particular or for AI-training related applications.”²³

- Dr. Cox opines that there is no market for the copyrighted materials at issue, including West Headnotes and WKNS, for the purpose of developing AI training data for legal research platforms. Dr. Cox opines that there is no market for West Headnotes as answers in question-answer pairs because there is no evidence that Plaintiffs market, license, or sell the West Headnotes for this purpose.²⁴ In addition, Dr. Cox opines that the WKNS were not copied by ROSS, and therefore ROSS did not have an impact on their value or the market for them.²⁵

In my opinion, Dr. Cox’s opinions are not founded in the facts of this case and, as a result, are not a reliable basis for analyzing the fourth fair use factor, or the other fair use factors. Sections 5 through 8 provide discuss the basis of my opinions and my critiques of the opinions of Dr. Cox.

²³ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 7.

²⁴ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 7.

²⁵ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 8.

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5 USE OF WESTLAW CONTENT BY ROSS AND BY PLAINTIFFS

Dr. Cox opines that “Westlaw Content is used in very different ways by Plaintiffs compared to ROSS, to the extent that such content could be considered to be used by ROSS.”²⁶ In his efforts to support this opinion, Dr. Cox mischaracterizes the purpose and use of Westlaw Content by Plaintiffs and ROSS. It is my understanding that one of the most important assessments for evaluating fair use factors one, three and four is whether the copyrighted material is being used for the same purpose by both the infringer and the copyright holder. As discussed in this section, in contrast to the opinion of Dr. Cox, both Plaintiffs and ROSS used Westlaw Content for the same purpose of developing training data for their respective AI-driven legal research platforms.

Dr. Cox attempts to support his opinion regarding Plaintiffs and ROSS using Westlaw Content in different ways by contrasting the use of Westlaw Content by subscribers to the Westlaw legal research platform, called “interactive use” of Westlaw Content by Dr. Cox, to the alleged use of Westlaw Content by ROSS to develop training data.²⁷ This comparison ignores the fact that both Plaintiffs and ROSS used Westlaw Content to develop training data for their competing legal research platforms, as discussed in Sections 5.1 and 5.2. Both ROSS and Plaintiffs developed search functionality using Westlaw Content as a training data input that was important to obtaining subscriber satisfaction with their respective platforms, contributing to the value of each platform. Dr. Cox also incorrectly minimizes the extent of ROSS’s alleged copying, and attempts to draw distinctions between the ways ROSS and Plaintiffs used Westlaw Content as training data that are not consistent with the facts.

5.1 ROSS’s Use of Westlaw Content for Training Data

ROSS’s initial legal research platform was “powered by IBM’s Watson (“Watson”), which is an off-the-shelf question-answering search algorithm that allows companies like ROSS to integrate Watson into their own products.”²⁸ ROSS’s training data for the Watson system was a spreadsheet of “legal question[s], passage(s) that answer [the] legal question[s], and relevance label(s)” created from memos prepared by LPOs,²⁹ such as LegalEase. ROSS requested that LegalEase prepare these memos using “LexisNexis/Westlaw and other reliable sources for your research.”³⁰

²⁶ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 5.

²⁷ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 5.

²⁸ Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, p. 37.

²⁹ Defendant and Counterclaimant ROSS Intelligence Inc.’s Supplemental Responses and Objections to Plaintiffs’ Set of Interrogatories (Supplemental Response to Interrogatory No. 11 Only), February 22, 2022, Supplemental Answer to Interrogatory No. 2, pp. 10-12.

³⁰ Email chain between Akash Venkat, Tariq Hafeez, Thomas Hamilton, Andrew Arruda, and Jimoh Ovbiagele, Subject: Legal Research Inquiry, September 20-21, 2015, ROSS-003277880-ROSS-003277881 at ROSS-003277881.



By mid-2017, ROSS determined that it needed to transition from the Watson technology to a legal research platform based on its own design.³¹ To develop the new ROSS legal research platform, ROSS needed a larger collection of judicial opinions as it expanded into other areas of law and a larger set of high-quality training data “in the form of legal memoranda.”³² As discussed in the Malackowski Report³³ and in the Opening Report of Dr. Jonathan Krein (the “Krein Report”),³⁴ ROSS, through LegalEase and Morae Global Corporation (“Morae Global”), used Westlaw Content to create this required training data.

On June 12, 2017, Mr. van der Heijden contacted LegalEase with a “ROSS Scale-Up Query” regarding ROSS’s interest in acquiring large batches of memo, starting with “between 25,000 to 100,000 memos in the ROSS format by end of summer.”³⁵ The memos that LegalEase was to create could relate to any legal practice area but would be in the same format as LegalEase was preparing at that time for ROSS.³⁶ ROSS reviewed the initial memos, gave edits and provided feedback before LegalEase went forward, scaling up the production.³⁷ ROSS understood that LegalEase would create the Bulk Memos by generating legal questions “in accordance with what [ROSS] wanted those questions to look like,” and would then “find case law passages in response” to the questions.³⁸

The Bulk Memos were created for ROSS between July 2017 and mid-January 2018,³⁹ a short timeframe for the number of memos required by ROSS as indicated by LegalEase’s need to use subcontractors to create the Bulk Memos. LegalEase found that using Westlaw Content made the creation of the Bulk Memos for ROSS more efficient.⁴⁰ The LegalEase process for creating the Bulk Memos included the use of both WKNS and Westlaw Headnotes. LegalEase used the WKNS to organize its memo process because the use of WKNS “was a helpful tool for [LegalEase to use] to

³¹ Defendant and Counterclaimant ROSS Intelligence Inc.’s Supplemental Responses and Objections to Plaintiffs’ Set of Interrogatories (Supplemental Response to Interrogatory No. 11 Only), February 22, 2022, Supplemental Answer to Interrogatory No. 2, p. 12.

³² Defendant and Counterclaimant ROSS Intelligence Inc.’s Supplemental Responses and Objections to Plaintiffs’ Set of Interrogatories (Supplemental Response to Interrogatory No. 11 Only), February 22, 2022, Supplemental Answer to Interrogatory No. 2, pp. 12-13; Andrew Arruda, Deposition March 30, 2022, pp. 275, 277.

³³ Expert Report of James E. Malackowski, August 1, 2022, pp. 30-34.

³⁴ Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, pp. 46-61.

³⁵ Email chain between Teri Whitehead and Tomas van der Heijden, Subject: ROSS Scale-Up Query, June 12-13, 2017, ROSS-000197671-ROSS-000197673 at ROSS-000197672.

³⁶ Email chain between Teri Whitehead and Tomas van der Heijden, Subject: ROSS Scale-Up Query, June 12-13, 2017, ROSS-000197671-ROSS-000197673 at ROSS-000197672.

³⁷ Tomas van der Heijden, 30(b)(6) Deposition March 17, 2022, pp. 325-326.

³⁸ Tomas van der Heijden, 30(b)(6) Deposition March 17, 2022, p. 327.

³⁹ Tariq Hafeez, 30(b)(6) Deposition May 26, 2022, pp. 78-79; Letter from Thomson Reuters to LegalEase providing notice of termination of access to Westlaw, January 4, 2018, TR-0002723; Email chain between Thomson Reuters Corporation and LegalEase and between LegalEase and Codematrix, Subject: Westlaw Termination, December 26, 2017-January 17, 2018, R-LEGALEASE-00101636-R-LEGALEASE-00101642 at R-LEGALEASE-00101637; Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, pp. 181-183, 186.

⁴⁰ Tariq Hafeez, 30(b)(6) Deposition May 26, 2022, p. 80.

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find topics and ensure that [LegalEase was] not duplicating topics.”⁴¹ LegalEase used Westlaw Headnotes to create the research questions for the ROSS Bulk Memos.⁴² Morae Global, a subcontractor to LegalEase for the Bulk Memo Project, also used Westlaw Headnotes to create questions in preparing Bulk Memos for ROSS, because it was guided by LegalEase that use of Westlaw Headnotes “was the most efficient path” of providing the information ROSS required for the Bulk Memos.⁴³

With its use of Westlaw Content, LegalEase was able to create a large number of Bulk Memos for ROSS. ROSS acknowledges obtaining approximately 25,000 Bulk Memos from LegalEase.⁴⁴ According to Mr. Ovbiagele, because of “the number of variations to [the Bulk Memo questions],” derived from Westlaw Headnotes, and “the number of quotes” ROSS had from the Bulk Memos, ROSS created over 750,000 question-answer pairs from the Bulk Memo Project that could be used to train its legal research platform.⁴⁵ ROSS claims that with these question-answer pairs, ROSS had “one of the largest training data sets in the tech industry, not limited to legal tech.”⁴⁶ Mr. Ovbiagele said that, “In speaking to leading scientists in the field about the size of our question/answer data set, they were also impressed by the size. In fact, it led many scientists to want to work for [ROSS].”⁴⁷

A June 28, 2018 ROSS Board presentation states that ROSS had “[b]uilt [a] proprietary Q&A system from [the] ground up and [was] completely off of IBM Watson.”⁴⁸ ROSS acknowledged that “[b]y the Fall of 2018, ROSS was no longer running on any Watson servers.”⁴⁹ That proprietary ROSS Q&A system was trained using the data from the Bulk Memo Project and the resulting approximately 25,000 memoranda prepared by LegalEase and its subcontractors that are alleged by Plaintiffs to infringe Plaintiffs’ copyrights.

According to Mr. Ovbiagele, the ROSS model, which “aggregates the ranking variables and signals and weights them,” was fed training data from the Bulk Memo Project and the raw text from judicial

⁴¹ Tariq Hafeez, 30(b)(6) Deposition May 26, 2022, p. 79.

⁴² Tariq Hafeez, 30(b)(6) Deposition May 26, 2022, p. 78.

⁴³ Christopher Cahn, 30(b)(6) Deposition May 12, 2022, pp. 194-198.

⁴⁴ Defendant and Counterclaimant ROSS Intelligence Inc.’s Supplemental Responses and Objections to Plaintiffs’ Set of Interrogatories (Supplemental Response to Interrogatory No. 11 Only), February 22, 2022, Supplemental Answer to Interrogatory No. 11, p. 63.

⁴⁵ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, pp. 186-188.

⁴⁶ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, p. 187.

⁴⁷ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, p. 188.

⁴⁸ ROSS Board Discussion Materials, June 28, 2018, ROSS-009722263-ROSS-009722299 at ROSS-009722264.

⁴⁹ Defendant and Counterclaimant ROSS Intelligence Inc.’s Supplemental Responses and Objections to Plaintiffs’ Set of Interrogatories (Supplemental Response to Interrogatory No. 11 Only), February 22, 2022, Supplemental Answer to Interrogatory No. 2, p. 12.

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opinions obtained from Casemaker.⁵⁰ These were the only sources of training data used for the ROSS model.⁵¹

These facts confirm the use and importance of the use of Westlaw Content to ROSS in the development of its legal research platform. ROSS obtained the large amount of training data that was needed by ROSS to create its own legal research platform, ending its reliance on Watson. This large amount of training data was obtained within a short timeframe, benefiting from LegalEase's determination that it was efficient to create the Bulk Memos using West Headnotes. This training data was of high quality and, as Dr. Krein explains, without this high-quality training data, ROSS's search functionality would have been of a lower quality.⁵² That is, high quality training data developed using Westlaw Headnotes improved the search functionality of ROSS legal research platform. This high-quality training data was available for ROSS to use in improving its search functionality because LegalEase used WKNS to organize its creation of the Bulk Memos for ROSS and both LegalEase and Morae Global used West Headnotes to create the Bulk Memos because that was the most efficient method to create Bulk Memos that met ROSS's requirements.

5.2 Plaintiffs' Use of Westlaw Content for Training Data

As discussed in the Malackowski Report⁵³ and in the Krein Report,⁵⁴ but not fully acknowledged by Dr. Cox in his expert report, Plaintiffs use Westlaw Content for training the algorithms that power their AI-driven legal research platform. Thomson Reuters Corporation introduced the concept of machine learning, a form of AI, to search in the 2006 to 2007 timeframe, and applied this in its development of Westlaw Next and WestSearch, the search algorithm for Westlaw Next.⁵⁵ Question-answer pair training data was used in developing WestSearch. The millions of daily queries in Westlaw were clustered to identify the questions to use in the training data.⁵⁶ Attorney editors ranked the headnotes that answered the identified questions as A, B, C, D or F.⁵⁷ These results were compared, with the relative ranking assigning a "cost" to the selection of a lower ranking headnote over a higher-ranking headnote. Hundreds of thousands of these example pairs and their relative ranking "costs" were used to train WestSearch the search algorithm for Westlaw Next.⁵⁸ While WKNS was not training data for WestSearch, WKNS was used beneficially in search algorithms in

⁵⁰ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, pp. 184-185.

⁵¹ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, pp. 186-187.

⁵² Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, p. 65.

⁵³ Expert Report of James E. Malackowski, August 1, 2022, pp. 26-27.

⁵⁴ Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, pp. 34-37.

⁵⁵ Khalid Al-Kofahi, Deposition April 8, 2022, pp. 16-17, 19.

⁵⁶ Khalid Al-Kofahi, Deposition April 8, 2022, p. 144.

⁵⁷ Khalid Al-Kofahi, Deposition April 8, 2022, pp. 52-53, 132-133.

⁵⁸ Khalid Al-Kofahi, Deposition April 8, 2022, pp. 97-98.



WestSearch to map versions of the same question by different users, identifying questions that were expressed differently but were addressing the same legal question.⁵⁹

The application of machine learning to search was enhanced in Westlaw Edge.⁶⁰ Khalid Al-Kofahi, Thomson Reuters Corporation's former Vice President of Research and Development, explained that Westlaw Edge can "understand the question, and understand the answer, and determine algorithmically that the answer is responsive to that question" using an "ensemble of algorithms."⁶¹ Westlaw Edge's search engine considered both headnotes and key numbers in determining an answer to a user's question.⁶² Mr. Al-Kofahi clarified:

[I]f a legal issue is attorney-client privileges, ... one of the algorithms would find key numbers that relate to attorney-client privileges, and if there is such a thing as extension of that privilege from one party to another ... That would be one algorithm.

Another algorithm would ... run the Q&A text against headnotes or cases or identical articles as well as structured records ... [Y]ou will run ... a number of algorithms against different data sets, and then you combined the results, and the way you combined the results is through training data.⁶³

Isabelle Moulinier, Thomson Reuters Corporation's VP, Research and Data Science, explained that in addition to its general search engine, Westlaw Edge has a specific search functionality called WestSearch Plus.⁶⁴ While general searches in Westlaw Edge provide a full and complete list of search results, WestSearch Plus identifies a "handful" of search results that provide "very specific portions of documents that can be characterized as an answer."⁶⁵ "Machine learning, natural language processing, citation networks, the Thomson Reuters taxonomy of law, the key number system, and the West archive of twenty-seven million headnotes work together to optimize search results" with WestSearch Plus.⁶⁶ Thomson Reuters Corporation's website explains that in Westlaw Edge and WestSearch Plus:

WestSearch Plus answers customers' questions posed in natural language. Behind the scenes, it mines the rich analytical material in our headnotes as the source for answers. It uses editorial guidelines to divide Headnotes into frames/intents. Then it classifies both answers and questions (mined from the query logs) to those intents. WestSearch Plus uses search strategies based on questions and intents to assemble a

⁵⁹ Khalid Al-Kofahi, Deposition April 8, 2022, pp. 23-24.

⁶⁰ Khalid Al-Kofahi, Deposition April 8, 2022, p. 20.

⁶¹ Khalid Al-Kofahi, Deposition April 8, 2022, pp. 20-21.

⁶² Khalid Al-Kofahi, Deposition April 8, 2022, pp. 23-24.

⁶³ Khalid Al-Kofahi, Deposition April 8, 2022, p. 22.

⁶⁴ Isabelle Moulinier, 30(b)(6) Deposition July 1, 2022, pp. 12-13.

⁶⁵ Isabelle Moulinier, 30(b)(6) Deposition July 1, 2022, pp. 13-14.

⁶⁶ Major Thomson Reuters Launch: Westlaw Edge, West Search Plus, Analytics, Enhances Citator and More, Jean O'Grady, July 12, 2018, Dewey B Strategic, <https://www.deweybstrategic.com/2018/07/6838.html>.



headnote candidate pool and uses natural language processing (NLP) & discourse features in XGBoost model to classify/score answers.⁶⁷

A team of approximately 20 Thomson Reuters Corporation scientists worked for 18 to 20 months to develop the ranking algorithms in Westlaw Edge.⁶⁸ To train these algorithms, Thomson Reuters Corporation used its own content and data from Westlaw. Specifically, West Key Numbers were used to train Westlaw Edge's general functionality with "key numbers for training the search specific to key numbers as an output as well as underlying information for training case search."⁶⁹ West Headnotes were used as the answers in question-answer pairs used to train WestSearch Plus.⁷⁰

5.3 Comparison of Plaintiffs' and ROSS's Use of Westlaw Content for Training Data

Both Plaintiffs and ROSS made extensive use of Westlaw Content in developing training data for building and improving search functionality for their legal research platforms. As discussed in Sections 5.1 and 5.2, both Plaintiffs and ROSS used West Headnotes as inputs for training data consisting of question-answer pairs. WKNS was also used by both Plaintiffs and ROSS to structure and refine the development of that training data.

Dr. Cox's report includes minimal recognition of Plaintiffs' use of Westlaw Content as training data, acknowledging only its use "as a particular component of Plaintiffs' training material for a very specific portion of their Artificial Intelligence program, WestSearch Plus."⁷¹ Instead, his report focuses on Westlaw Content as a "structure that guides the [legal] research undertaken by Plaintiffs' customer-licensees."⁷² This use of Westlaw Content in structuring the research undertaken by legal researchers on Westlaw is in addition to Plaintiffs' use of Westlaw Content in creating training data for its AI system discussed in Section 5.2.⁷³ Subscribers using Westlaw Content for legal research benefit from the use of Westlaw Content in training data because Plaintiffs' search algorithm provides improved search results attributable, at least in part, to training on high-quality data.⁷⁴

When Dr. Cox acknowledges that Westlaw Content was "used internally by Plaintiffs as a particular component of Plaintiffs' training material," he limits this consideration to Plaintiffs' "Artificial Intelligence program, WestSearch Plus,"⁷⁵ ignoring the long-term and varied use of Westlaw Content for AI training data by Plaintiffs' as explained in Section 5.2. With regard to WestSearch Plus, Dr.

⁶⁷ Our AI Timeline, TR-0037669-TR-0037676 at TR-0037674.

⁶⁸ Khalid Al-Kofahi, Deposition April 8, 2022, p. 60.

⁶⁹ Isabelle Moulinier, 30(b)(6) Deposition July 1, 2022, p. 143; Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, pp. 36-37.

⁷⁰ Isabelle Moulinier, 30(b)(6) Deposition July 1, 2022, pp. 77-78.

⁷¹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 6.

⁷² Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 5.

⁷³ Free vs. Westlaw: Why you need the West Key Number System, Thomson Reuters, <https://legal.thomsonreuters.com/en/insights/articles/using-the-west-key-numbers-system>.

⁷⁴ Interview of Jonathan Krein, Ph.D.

⁷⁵ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 6.

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Cox asserts that, “Plaintiffs used the headnotes as the answers in the question-answer pairs that were used as part of the training material for Plaintiffs’ Artificial Intelligence software, software that was designed to identify only headnotes in response to natural language legal questions.” (emphasis in original)⁷⁶ Dr. Cox contrasts this with his understanding of ROSS’s use of West Headnotes “as a component of its training material for its Artificial Intelligence program” in which “the headnotes were used by ROSS as the starting point to generate questions in question-answer pairs that make up ROSS’s Artificial Intelligence training material, *not* answers. Also, ROSS’s program returned only the text from judicial opinions,” not West Headnotes or other Westlaw Content.⁷⁷

I understand from Dr. Krein that the contrast Dr. Cox attempts to create between the use of West Headnotes by Plaintiffs and the use by ROSS with their AI programs is not accurate.⁷⁸ Dr. Krein explained that the purpose of the use of West Headnotes by ROSS was the same as the purpose of the use of West Headnotes by Plaintiffs for WestSearch Plus: both ROSS and Plaintiffs used West Headnotes as input in the form of training data used to teach an AI system to provide relevant portions of judicial opinions in response to a natural language question. The fact that WestSearch Plus provides subscribers a list of West Headnotes linked to judicial opinions in response to natural language questions instead of the judicial opinions themselves is not materially different from the judicial case excerpts provided to users of the ROSS legal research platform in response to natural language questions. The West Headnotes in Westlaw are drawn from and are linked to judicial opinions, providing a convenient means for West subscribers to identify the section of the judicial opinion most relevant to the question posed by the subscriber.⁷⁹

5.4 Extent of Use of Westlaw Content by ROSS

As part of his analysis of “the use made of Westlaw Content by ROSS,” Dr. Cox incorrectly minimizes the extent of use of West Headnotes by ROSS and LegalEase, proposing that 0.086 percent of the total number of West Headnotes on Westlaw were copied.⁸⁰ Dr. Cox concludes this from a comparison of the number of Bulk Memos to the total number of unique West Headnotes. ROSS acknowledges obtaining approximately 25,000 legal memoranda from LegalEase.⁸¹ In addition, ROSS obtained over 750,000 question-answer pairs from the Bulk Memo Project with LegalEase, which according to Mr. Ovbiagele, was an impressive size “to leading scientists in the

⁷⁶ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 6.

⁷⁷ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, pp. 6-7.

⁷⁸ Interview of Jonathan Krein, Ph.D.

⁷⁹ Interview of Jonathan Krein, Ph.D.

⁸⁰ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, pp. 29-30.

⁸¹ Defendant and Counterclaimant ROSS Intelligence Inc.’s Supplemental Responses and Objections to Plaintiffs’ Set of Interrogatories (Supplemental Response to Interrogatory No. 11 Only), February 22, 2022, Supplemental Answer to Interrogatory No. 11, p. 63.



field.”⁸² This indicates that, considering the purpose for which ROSS was copying the Westlaw Content, it was taking a substantial amount.

Similarly, LegalEase’s copying, which Plaintiffs contend ROSS is liable for, was also substantial. As I explained in the Malackowski Report:⁸³

Plaintiffs have determined that to create those 25,000 memos, LegalEase and its subcontractors “copied at least 45,016 editorially-enhanced judicial opinions, representing the cases cited in the memos from which LegalEase derived a ‘good’ or ‘great’ quote.”⁸⁴ To identify these 45,000 plus editorially-enhanced judicial opinions for the Bulk Memo Project, LegalEase and its subcontractors accessed approximately 443,700 state and federal cases, including cases accessed on a transaction basis and cases accessed on a time basis.⁸⁵ Plaintiffs state that, “Each time LegalEase clicked on a case on Westlaw, it copied a myriad of protectable content without the benefit of a license to that content. This included West Headnotes, Key Numbers, original synopses, and other editorial enhancements, *verbatim*.”⁸⁶

The number of question-answer pairs prepared by ROSS from the Bulk Memos and the number of cases accessed by LegalEase in creating the Bulk Memos, with each instance copying Plaintiffs’ protected content, indicates that ROSS’s benefits from its alleged infringement of Westlaw Content was larger in comparison to the number of West Headnotes than proposed by Dr. Cox.

⁸² Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, pp. 186-188.

⁸³ Expert Report of James E. Malackowski, August 1, 2022, p. 59.

⁸⁴ Plaintiffs and Counterdefendants Thomson Reuters Enterprise Centre GmbH and West Publishing Corporation’s Second Supplemental Responses and Objections to Defendant and Counterclaimant ROSS Intelligence Inc.’s Interrogatory No. 21, June 9, 2022, First Supplemental Response to Interrogatory No. 21, p. 22.

⁸⁵ Expert Report of James E. Malackowski, August 1, 2022, Schedule 1.2

⁸⁶ Plaintiffs and Counterdefendants Thomson Reuters Enterprise Centre GmbH and West Publishing Corporation’s Second Supplemental Responses and Objections to Defendant and Counterclaimant ROSS Intelligence Inc.’s Interrogatory No. 21, June 9, 2022, First Supplemental Response to Interrogatory No. 21, p. 22.

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6 ROSS'S PLATFORM CREATED AS SUBSTITUTE FOR WESTLAW

Dr. Cox minimizes the importance of ROSS's use of Westlaw Content in its efforts to create a legal research platform to compete with Westlaw, among other legal research platforms. The Malackowski Report summarizes information about some of the legal research platform providers competing in the U.S., among other geographies, including Thomson Reuters Corporation, LexisNexis, Bloomberg, Fastcase, Casemaker and Casetext.⁸⁷ In contrast to the competition between legal research platforms described in the Malackowski Report, Dr. Cox describes the ROSS platform and Westlaw as different products facilitating different types of research.⁸⁸ Dr. Cox even claims that Westlaw Content limits legal researchers, contrary to available evidence discussed in this section. Dr. Cox also asserts, without support, that users of ROSS's legal research platform would not have subscribed to Westlaw if ROSS's platform were not available.

6.1 ROSS Platform Developed Using the Bulk Memos to Compete with Other Platforms

ROSS has acknowledged that ROSS offered a legal research platform that competed with Westlaw.⁸⁹ ROSS's documents identified Westlaw as a competitor.⁹⁰ Mr. Arruda agreed that ROSS competed with Plaintiffs' Westlaw and that both companies "target lawyers as customers."⁹¹ In the first quarter of 2019, one of ROSS's top level product goals was to "Take market share from Westlaw and Lexis."⁹² Success in achieving this goal would be measured by "20 solo-practitioners or small law firms in our Headpin market switch over completely or indicate their intent to switch over completely from WEXIS once their subscriptions with WEXIS expire."⁹³ According to ROSS, it "brought on some of the world's top law firms as customers," identifying Kobre & Kim, Kilpatrick Townsend, Clark Hill, Dickinson Wright, Carlton Fields, Dentons and Jackson Lewis.⁹⁴ Plaintiffs also determined that the legal research platform being develop by ROSS would result in ROSS and Plaintiffs being competitors.⁹⁵

⁸⁷ Expert Report of James E. Malackowski, August 1, 2022, pp. 13-17.

⁸⁸ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 28.

⁸⁹ Andrew Arruda, Deposition March 30, 2022, pp. 39, 103, 114; Powered by IBM Watson Application Executive Summary, ROSS-003705907-ROSS-003705908 at ROSS-003705907; Declaration of Andrew Arruda, *West Publishing Corporation v. LegalEase Solutions, LLC*, Case No. 0:18-cv-01445, October 1, 2019, p. 2; Tomas van der Heijden, 30(b)(6) Deposition March 17, 2022, p. 55.

⁹⁰ Powered by IBM Watson Application Executive Summary, ROSS-003705907-ROSS-003705908 at ROSS-003705907.

⁹¹ Andrew Arruda, Deposition March 30, 2022, pp. 39, 112, 114.

⁹² ROSS's Top 3 Product Goals for Q1 2019, ROSS-009501052-ROSS-009501053 at ROSS-009501052.

⁹³ ROSS's Top 3 Product Goals for Q1 2019, ROSS-009501052-ROSS-009501053 at ROSS-009501052.

⁹⁴ Slide Notes, ROSS-010114898-ROSS-010114899.

⁹⁵ Email chain between Melissa Pritchard, Tara Levin, Kelly Phillipson and Charles Mikesell and Thomas Hamilton, Subject: Ross Intelligence – Demo Practice Point, September 21, 2015 and September 25, 2015, ROSS-003389728-ROSS-0003389730 at ROSS-003389728.

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To develop its legal research platform that competes with Westlaw, among other platforms, ROSS is accused of infringing Plaintiffs' copyrighted Westlaw Content with the Bulk Memos that were used by ROSS as training data.⁹⁶ Dr. Cox bases his determination of "whether ROSS's alleged copyright infringement had an effect on the market for and value of Westlaw Content" on purported differences in use of the copyrighted materials by Plaintiffs and by ROSS.⁹⁷ For example, Dr. Cox states that, "ROSS did not provide [Plaintiffs'] copyrighted material to its customer-licensees. Indeed the allegedly infringing Memos would have been useless to ROSS's customer-licensees."⁹⁸ This statement by Dr. Cox ignores the fact that the Bulk Memos were critical to training the ROSS legal research platform to be capable of responding to the queries of ROSS's customer-licensees. Without the use of this training data, the ROSS legal research platform would be "useless" to its customer-licensees.⁹⁹

6.2 West Headnotes and WKNS Facilitate, Not Limit, Legal Research

Dr. Cox points to superficial distinctions between the ROSS platform and Westlaw that do not change the fact of the importance of the Bulk Memos to ROSS. For example, he asserts that because the West Headnotes and judicial opinions are organized under WKNS, search results will necessarily "be aggregated in a manner that reflects the patterns and limits imposed by this classification system," and suggests that this is a limitation on the Westlaw platform that ROSS's platform does not have.¹⁰⁰ Instead, Westlaw Content is a feature, not a limitation. Dr. Cox's report even discusses various uses and benefits of Westlaw Content by West subscribers in performing legal research.¹⁰¹ Dr. Cox acknowledges that WKNS and West Headnotes "organize[] a large portion of the law and thus allows researchers to feel confident that their interactive research [using Westlaw] will include the opportunity to identify a significant amount of relevant material."¹⁰² Dr. Cox also acknowledges that Westlaw's structure including WKNS and West Headnotes has been "built up over decades" with updating by human reviewers or Attorney Editors to reflect "where things are changing in the law."¹⁰³

In contrast to the limitations perceived by Dr. Cox, the Thomson Reuters Corporation website explains how a legal researcher, who would generally be expected to be conducting legal research focused on one topic at a time for a particular research effort, can use West Headnotes and WKNS to efficiently identify judicial opinions relevant to the research topic. For example, searching by WKNS and topics "helps to find specific Key Numbers that use the language [that is the basis of the

⁹⁶ Complaint, May 6, 2020, pp. 11-14.

⁹⁷ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 19.

⁹⁸ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 20.

⁹⁹ Interview of Jonathan Krein, Ph.D.

¹⁰⁰ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, pp. 24-25.

¹⁰¹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, pp. 21-25.

¹⁰² Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 24.

¹⁰³ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 24.

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researcher's query], whereas the search in headnotes provides a broader option to find helpful headnotes or related Key Numbers."¹⁰⁴ With this search approach, "[f]inding one case on point will directly lead [the researcher] to others through Key Numbers. *Headnotes are summaries of specific points of law addressed in a particular case, drafted by Westlaw Attorney Editors to ensure that topics include relevant cases even where those cases may use atypical language.*"¹⁰⁵ This website also notes the alternative provided by Plaintiffs for natural language search, stating, "WestSearch Plus on Westlaw Edge provides superior research suggestions right from the search box, then provides the most relevant text for [the researcher's] legal query without the need to dive into a result list" by returning West Headnotes linked to judicial opinions.¹⁰⁶

6.3 ROSS Users Not Shown to be Uninterested in Westlaw

Dr. Cox attempts to show that ROSS's legal research platform is based on a different approach than Plaintiff's platform, suggesting that ROSS used an "alternative approach[] ... utilizing newly emergent technologies."¹⁰⁷ According to Dr. Cox, "[n]atural language search methodologies such as ROSS's tend to be untethered from the sort of classification imposed by West, and this freedom from an imposed structure is an attribute that different legal researchers may prefer and which may extract, uncover and disclose points of law that the [WKNS] structure may miss."¹⁰⁸ Dr. Cox does not provide examples of points of law that the ROSS legal research platform provides to legal researchers that are missed in, or are substantially different from, the points of law on Plaintiffs' legal research platform. Dr. Cox fails to acknowledge that ROSS's natural language legal research platform provides responses to questions after AI training using training data developed from the Bulk Memos alleged to infringe Plaintiffs' copyrighted materials. In addition, Dr. Cox fails to show how, if at all, the ROSS natural language approach is so different from the product offered by Plaintiffs with WestSearch Plus in Westlaw Edge that ROSS was attracting different customers due to its natural language approach. Dr. Cox acknowledges that it "is not relevant to the Factor Four consideration in this case," but still decides to include in his report his conclusion, without citing evidence, that "[i]t seems unlikely that West lost any customers directly as a result of ROSS's use of Westlaw Content, in particular the use of headnotes to train an algorithm."¹⁰⁹ Instead, as discussed earlier in this section, ROSS's legal research platform competed with Westlaw, among others, and had a goal to "[t]ake market share from Westlaw and Lexis."¹¹⁰

¹⁰⁴ Free vs. Westlaw: Why you need the West Key Number System, Thomson Reuters, <https://legal.thomsonreuters.com/en/insights/articles/using-the-west-key-numbers-system>.

¹⁰⁵ Emphasis in original. Free vs. Westlaw: Why you need the West Key Number System, Thomson Reuters, <https://legal.thomsonreuters.com/en/insights/articles/using-the-west-key-numbers-system>.

¹⁰⁶ Free vs. Westlaw: Why you need the West Key Number System, Thomson Reuters, <https://legal.thomsonreuters.com/en/insights/articles/using-the-west-key-numbers-system>.

¹⁰⁷ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 25.

¹⁰⁸ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 25.

¹⁰⁹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 34.

¹¹⁰ ROSS's Top 3 Product Goals for Q1 2019, ROSS-009501052-ROSS-009501053 at ROSS-009501052.



7 ROSS'S COPYING DOES NOT BENEFIT PLAINTIFFS OR THE PUBLIC

Dr. Cox's report presents opinions that both Plaintiffs and the public have benefited from ROSS's alleged copying of Westlaw Content and using it as training data to develop ROSS's legal research platform. As discussed in this section, these opinions are not consistent with the facts of this case. There is no factual support for Dr. Cox's contention that the value of Westlaw Content would increase due to ROSS's copying. Nor is there evidence of public benefit from ROSS's copying as proposed by Dr. Cox, such as meeting the needs of legal researchers who cannot access any legal research platform other than ROSS's. Instead, ROSS's copying, if allowed without cost to ROSS, would harm the public by discouraging investment in legal research platforms, such as Westlaw, which have provided a trusted resource to lawyers and other legal researchers.

7.1 Assertions of Benefits to Plaintiffs of ROSS's Alleged Copying

Dr. Cox opines that, "ROSS's use of Westlaw Content may increase the value of Westlaw Content" by increasing the size of the market for legal research by "[l]owering average costs" which he expects to result in "increased utilization and consumption of legal services and the number of users of these legal research tools."¹¹¹ Dr. Cox provides no explanation as to why ROSS's legal research platform would be more likely to expand the "base of potential consumers with fewer financial resources and less ability to pay West prices"¹¹² than other price competitive legal research platforms that are not accused of infringing Plaintiffs' copyrights, such as the availability of Fastcase through "the bar associations of all 50 states, the District of Columbia, the U.S. Virgin Islands, and four-dozen metropolitan, county and specialty bar associations."¹¹³ Dr. Cox has not shown that the number of these subscribers would increase nor that the use and consumption of legal services would increase if ROSS entered the competition for lower cost legal research platforms.

Nor does Dr. Cox provide any explanation as to how, even if it were possible that ROSS's platform could expand the size of the market for legal research platforms to include consumers that are less able to pay West prices, the result would include an increase in the value of Westlaw Content. Proposing that "West could charge higher prices to its loyal customers who prefer[] the Westlaw Content as provided by West"¹¹⁴ ignores the competitive nature of the market for legal research platforms, as discussed in the Malackowski Report.¹¹⁵ Dr. Cox provides no evidence that competition with an additional legal research platform, such as ROSS's, would alter the price Plaintiffs' subscribers would be willing to pay for the benefits of using Westlaw.

¹¹¹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 37.

¹¹² Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 38, footnote 153.

¹¹³ Longtime Competitors Fastcase and Casemaker Merge, Reshaping the Legal Research Landscape, Bob Ambrogi, LawSites, January 5, 2021, <https://www.lawnext.com/2021/01/longtime-competitors-fastcase-and-casemaker-merge-reshaping-the-legal-research-landscape.html>.

¹¹⁴ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 37.

¹¹⁵ Expert Report of James E. Malackowski, August 1, 2022, pp. 13-17.

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7.2 Assertions of Benefits to the Public of ROSS's Alleged Copying

Dr. Cox asserts that ROSS provided a public benefit by lowering the cost of legal research, offering access beyond “consumers with any interest in legal research services, an ability to pay West’s high prices, and an ability to commit to West’s long-term licenses.”¹¹⁶ Not only does Dr. Cox fail to identify any of these consumers he claims would benefit, he fails to consider the public harm from discouraging investment in the high quality editorial content in which Plaintiffs represent to have “invested vast resources, including creativity, talent, time, effort, and money.”¹¹⁷

Dr. Cox fails to identify members of the “base of potential consumers with fewer financial resources and less ability to pay West prices,”¹¹⁸ whose needs are not met by the current legal research ecosystem. In order for ROSS to create more demand for legal research services, as expected by Dr. Cox, there would have to be potential legal research consumers who are not currently subscribing to legal research platforms available at lower prices than Westlaw, such as Fastcase. Dr. Cox does not provide evidence of these potential legal researcher with unmet needs. Because alternative legal research platforms are currently made available without copying Plaintiffs’ copyrighted materials, there does not appear to be support for Dr. Cox’s contention that, “Access to the law at a low cost for more people, who could not otherwise afford it, using effective AI tools [allegedly developed by infringing Plaintiffs’ copyrights] serves the public interest.”¹¹⁹

The range of legal research platforms currently competing with a variety of features and prices without copying Plaintiffs’ copyrighted materials indicates that instead of a public benefit, ROSS’s copying, without appropriate compensation, results in harm by impairing the value of that content and discouraging continuing investment in proprietary editorial content. To launch Bloomberg Law, Bloomberg “added some 250 full-time attorneys to sort through cases on top of teams of support and sales people to set up shop at top law schools and knock on firms’ doors,” over a period of five years before launching its legal research platform.¹²⁰ Plaintiffs assert that they have “invested vast resources, including creativity, talent, time, effort, and money, to create Westlaw Content” including the creation of “West Headnotes summarizing key points of law, and organizing those cases and West Headnotes in the WKNS,” noting that WKNS “is the result of decades of human creativity and choices.”¹²¹ Plaintiffs, and others currently providing legal research platforms without copying Plaintiffs’ proprietary content for commercial gain, provide trusted legal research services, assisting lawyers and others to efficiently research the law. If Plaintiffs’ West Headnotes and WKNS could

¹¹⁶ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 38, footnote 153.

¹¹⁷ Complaint, May 6, 2020, p. 8.

¹¹⁸ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 38, footnote 153.

¹¹⁹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 38, footnote 153.

¹²⁰ Bloomberg Hangs New Shingle, The Wall Street Journal, July 8, 2010, <https://www.wsj.com/articles/SB10001424052748704545004575353143750422612>.

¹²¹ Complaint, May 6, 2020, p. 8.



be freely used to develop competing legal research platforms, investment in this type of editorial content would be discouraged.

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8 POTENTIAL MARKET FOR WESTLAW CONTENT

Dr. Cox focuses his analysis on the lack of marketing, licensing or selling of Plaintiffs' West Headnotes for the training of AI, stating that "there is no evidence that West licenses to software researchers the headnotes allegedly used by ROSS in the process of training its ranking algorithm. Thus, ROSS has not supplanted any market for the use of Westlaw Content in training of AI."¹²² Instead Dr. Cox focuses on Plaintiffs' licensing subscribers, providing access to Westlaw Content for legal research purposes.¹²³ Dr. Cox fails to consider the potential market for Westlaw Content as AI training data, as discussed in the Malackowski Report, as well as in this section of my rebuttal report. Dr. Cox also fails to consider whether ROSS's conduct, if it were widespread, would impair the value of the Westlaw Content. As discussed in this section, I concluded that it would.

8.1 Dr. Cox's Inaccurate Analysis of the Market or Potential Market for Westlaw Content

Dr. Cox relies on what I understand to be an inaccurate representation of the fourth fair use factor as being a requirement for the copyright owner to actually use or intend to use its allegedly infringed copyrighted materials in establishing a market reflecting the alleged use of those copyrighted materials by the defendant.¹²⁴ As discussed in Section 2, it is my understanding that courts consider "likely to be developed markets"¹²⁵ and "[a]ctual present harm need not be shown."¹²⁶ Courts have ruled against a fair use defense even where a plaintiff did not itself license the copyrighted work and had no present intention to do so.¹²⁷ More broadly than the specific conduct of the alleged infringers, courts consider "whether unrestricted and widespread conduct of the sort engaged in by the defendant ... would result in a substantially adverse impact on the potential market for the original."¹²⁸

Dr. Cox incorrectly relies on a purported admission by West "that there is no licensing market for the Westlaw Content at issue" because he limits his consideration to the lack of "evidence that West licenses to software researchers the headnotes allegedly used by ROSS in the process of training its ranking algorithms."¹²⁹ Dr. Cox is incorrectly limiting his consideration to whether Plaintiffs themselves are currently licensing the content for the alleged infringing use of Westlaw Content as AI training data for legal research platforms, rather than the approach suggested by courts of whether such a market is "traditional, reasonable, or likely to be developed."¹³⁰ In other words, even

¹²² Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 35.

¹²³ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 35.

¹²⁴ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, pp. 7, 35-40.

¹²⁵ *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 91 (2nd Cir. 2014).

¹²⁶ *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 450-51 (1984).

¹²⁷ *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1191-1192 (9th Cir. 2012).

¹²⁸ *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 821 (9th Cir. 2002).

¹²⁹ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 35.

¹³⁰ *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 930 (2d Cir. 1994).



if West has no present intent of entering a market offering Westlaw Content as AI training data for legal research platforms, that does not mean that such a market could not develop or that potential copiers can be the first to “pull the trigger”¹³¹ by using the copied content in that market without a license.

Dr. Cox attempts to support his incorrect opinion on the lack of a market for West Headnotes for use in training algorithms for legal research platforms with assertions that because ROSS did not provide Westlaw Headnotes on its legal research platform that its copying did not impair the value of Westlaw Content.¹³² In addition, Dr. Cox opines that ROSS’s legal research platform would not have attracted as customers those West subscribers who have a preference for performing legal research enjoying the benefits of Westlaw Content. According to Dr. Cox, the “[l]egal researchers who did switch to ROSS would have been those that were indifferent to or rejected the structure of Westlaw Content and did not want to license the uses of the Westlaw Content provided by West.”¹³³ Dr. Cox ignores the fact that ROSS used Westlaw Content as training data to develop its legal research platform to compete with Westlaw and other legal research platforms, as discussed in Section 6, and the existence of the alternative legal research platforms meant that a researcher who “did not want to license the uses of the Westlaw Content provided by West” could subscribe to a different non-accused legal research platform that existed prior to ROSS developing a competing platform.

8.2 Opinion Regarding the Potential Market for the Copyrights at Issue

Section 11.1 of the Malackowski Report presents my analysis and opinions regarding the potential market for Westlaw Content as AI training data for developing legal research platforms. My opinion on this issue has not changed since the issuance of the Malackowski Report.

Specifically, ROSS engaged LegalEase to prepare the Bulk Memos that served as training data for ROSS after searching for alternatives, including attempting to obtain a license to Westlaw.¹³⁴ ROSS could not train its legal research platform using only raw judicial opinions without editorial enhancements. Rather, ROSS needed data like Westlaw Content to create its questions and answers

¹³¹ *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1183-1184 (9th Cir. 2012).

¹³² Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 36.

¹³³ Expert Report of Alan J. Cox, Ph.D., August 1, 2022, p. 36.

¹³⁴ Email chain between Andrew Arruda, Thomas Hamilton, Jimoh Ovbiagele, and Akash Venkat, July 29, 2015, ROSS-003334354; Master Services Agreement between ROSS Intelligence, Inc. and LegalEase Solutions LLC, effective October 15, 2015, TR-0038909-TR-0038920; Email chain between Tomas van der Heijden and Teri Whitehead, Subject: Final SOW, September 15, 2017, with attachment Statement of Work II for ROSS Bulk Memos between ROSS Intelligence, Inc. and LegalEase Solutions, LLC, September 15, 2017, ROSS-000304769-ROSS-000304784 at ROSS-000304771-ROSS-000304774; Email chain between Melissa Pritchard, Tara Levin, Kelly Phillipson and Charles Mikesell and Thomas Hamilton, Subject: Ross Intelligence – Demo Practice Point, September 21, 2015 and September 25, 2015, ROSS-003389728-ROSS-0003389730 at ROSS-003389728.

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that were used to train its legal research platform, confirming demand for a potential market for the copyrights at issue.¹³⁵

An alternative to infringing Plaintiffs' copyrights was for ROSS to create its own data comparable to that in the Westlaw Content for its AI training data, but the cost of doing so would have been very high.¹³⁶ As Mr. Ovbiagele acknowledged, ROSS did not retrain its models without using the Bulk Memos because "[t]he creation of a new data set of sufficient size and quality would have been too expensive."¹³⁷ The high cost of alternatives confirms demand for a potential market for the copyrights at issue for the purpose of AI training data.

ROSS required LegalEase to destroy all of the copies of the Bulk Memos developed for use by ROSS as training data because ROSS did not want LegalEase to sell the training data to another entity, since acquiring that training data would allow a competing entity to "create a machine learning model that is comparable to ours."¹³⁸ This demonstrates that ROSS was aware that other potential developers of legal research platforms would also create demand for the potential market for Plaintiffs' copyrighted materials for the purpose of creating AI training data.

Demand is also demonstrated by Plaintiffs' own use of WKNS and West Headnotes as training data for its AI models.¹³⁹ Aspects of Westlaw Content were used by Plaintiffs in developing and training WestSearch, the search algorithm for Westlaw Next, the general search function of Westlaw Edge as well as the natural language search functionality for Westlaw Edge, WestSearch Plus.¹⁴⁰

Plaintiffs' use of Westlaw Content and the unauthorized use of Westlaw Content by ROSS to develop AI training data for legal research platforms confirm the demand for and potential for a market for Westlaw Content for this purpose, if Plaintiffs were to elect to license the Westlaw Content as AI training data for legal research platforms. As discussed in the Malackowski Report, other companies offering legal research platforms promote their use of AI, further indicating demand for training data and the potential for a market for Westlaw Content as AI training data for legal research platforms.¹⁴¹ In addition, both the Malackowski Report¹⁴² and the Krein Report¹⁴³ identify a number of sellers of data that can be used for training data for the purposes of AI, confirming that other markets for this type of data exist and it would be reasonable for it a market

¹³⁵ Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, pp. 75, 89.

¹³⁶ Interview of Jonathan Krein, Ph.D.

¹³⁷ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, p. 227.

¹³⁸ Jimoh Ovbiagele, 30(b)(6) Deposition April 12, 2022, pp. 167-168.

¹³⁹ Isabelle Moulinier, 30(b)(6) Deposition July 1, 2022, p. 143.

¹⁴⁰ Khalid Al-Kofahi, Deposition April 8, 2022, pp. 16-17, 20; Isabelle Moulinier, 30(b)(6) Deposition July 1, 2022, pp. 12-13; Major Thomson Reuters Launch: Westlaw Edge, West Search Plus, Analytics, Enhances Citor and More, Jean O'Grady, July 12, 2018, Dewey B Strategic, <https://www.deweybstrategic.com/2018/07/6838.html>.

¹⁴¹ Expert Report of James E. Malackowski, August 1, 2022, pp. 46-48.

¹⁴² Expert Report of James E. Malackowski, August 1, 2022, pp. 46-48.

¹⁴³ Opening Expert Report of Dr. Jonathan L. Krein, August 1, 2022, pp. 79-88.

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for the copyrights at issue for the purpose of AI training data to develop, if Plaintiffs were willing to offer its Westlaw Content for this purpose.

If unauthorized free use of Westlaw Content is allowed, the value of a license to Westlaw Content would be minimal, since others would also assume that they should have free access to Westlaw Content for use as AI training data for legal research platforms. The benefits and value to Plaintiffs of exclusive rights to Westlaw Content as AI training data for its own legal research platform would be impaired due to forced competition with legal research platforms trained with free access to Westlaw Content while Plaintiffs continue to invest in developing and improving Westlaw Content.

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9 SIGNATURE

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James E. Malackowski", written over a horizontal line.

James E. Malackowski

September 6, 2022

Date

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Thomson Reuters and Westlaw Produced Documents

TR-0000030	TR-0037211 - TR-0037214	TR-0179887 - TR-0179890
TR-0000568 - TR-0000581	TR-0037669 - TR-0037680	TR-0179889
TR-0000587 - TR-0000590	TR-0037703 - TR-0037706	TR-0358927 - TR-0358948
TR-0000695 - TR-0000696	TR-0037860 - TR-0037861	TR-0358967 - TR-0358988
TR-0001119 - TR-0001122	TR-0038909 - TR-0038922	TR-0359181 - TR-0359186
TR-0001142 - TR-0001165	TR-0039860 - TR-0039885	TR-0359202 - TR-0359204
TR-0001253	TR-0039933 - TR-0039942	TR-0359401 - TR-0359443
TR-0001733 - TR-0001735	TR-0040273 - TR-0040566	TR-0359503 - TR-0359560
TR-0001965 - TR-0001971	TR-0044730	TR-0359564 - TR-0359954
TR-0002635 - TR-0002636	TR-0048605 - TR-0048606	TR-0359959 - TR-0360216
TR-0002705 - TR-0002710	TR-0048620	TR-0361194 - TR-0361207
TR-0002723	TR-0048725 - TR-0048732	TR-0433738 - TR-0433741
TR-0002758 - TR-0002772	TR-0049195 - TR-0049200	TR-0521595
TR-0002775	TR-0073545 - TR-0073546	TR-0526552 - TR-0528261
TR-0002779 - TR-0002783	TR-0091408 - TR-0091411	TR-0532236 - TR-0532373
TR-0002812 - TR-0002814	TR-0098206 - TR-0098209	TR-0532427
TR-0002837 - TR-0002839	TR-0135110 - TR-0135116	TR-0532475 - TR-0532476
TR-0002844 - TR-0002849	TR-0178604 - TR-0178612	TR-0532519 - TR-0532520
TR-0002864 - TR-0003137	TR-0179830 - TR-0179845	TR-0549927 - TR-0549958
TR-0033982 - TR-0033985	TR-0179838 - TR-0179847	TR-0734270 - TR-0734276
TR-0033999 - TR-0034002	TR-0179838 - TR-0179850	TR-0836004
TR-0034152 - TR-0034155	TR-0179863 - TR-0179870	TR-0894151 - TR-0894157
TR-0034357 - TR-0034359	TR-0179863 - TR-0179872	TR-0908413 - TR-0908442
TR-0034509 - TR-0034512	TR-0179876 - TR-0179877	TR-0908447
TR-0034557 - TR-0034560	TR-0179876 - TR-0179878	TR-0908678 - TR-0908680
TR-0035897 - TR-0035908	TR-0179877	TR-0908939 - TR-0908942
TR-0035922 - TR-0035925	TR-0179884 - TR-0179886	TR-0909025 - TR-0909029
TR-0036336 - TR-0036340	TR-0179885	WPC-0001475 - WPC-0001476

ROSS Produced Documents

ROSS_0103232888	ROSS-000176146 - ROSS-000176148	ROSS-000197791 - ROSS-000197794
ROSS-000000001 - ROSS-000000002	ROSS-000176758 - ROSS-000176780	ROSS-000197949 - ROSS-000197951
ROSS-000061913 - ROSS-000061932	ROSS-000176798 - ROSS-000176803	ROSS-000198151 - ROSS-000198152
ROSS-000175054 - ROSS-000175067	ROSS-000197671 - ROSS-000197673	ROSS-000201544

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ROSS-000201630 - ROSS-000201632	ROSS-003390101 - ROSS-003390105	ROSS-009603341
ROSS-000203449 - ROSS-000203467	ROSS-003390233 - ROSS-003390236	ROSS-009621324 - ROSS-009621325
ROSS-000204216 - ROSS-000204218	ROSS-003390563 - ROSS-003390565	ROSS-009637399 - ROSS-009637400
ROSS-000204366 - ROSS-000204367	ROSS-003390586 - ROSS-003390587	ROSS-009637509
ROSS-000235965 - ROSS-000235969	ROSS-003390869 - ROSS-003390871	ROSS-009659108
ROSS-000241438 - ROSS-000241439	ROSS-003390881 - ROSS-003390884	ROSS-009659301
ROSS-000247118 - ROSS-000247120	ROSS-003391075	ROSS-009659437
ROSS-000251670 - ROSS-000251671	ROSS-003391127 - ROSS-003391130	ROSS-009659609
ROSS-000271277 - ROSS-000271302	ROSS-003413719	ROSS-009660296
ROSS-000304769 - ROSS-000304784	ROSS-003414996	ROSS-009660815
ROSS-000304847 - ROSS-000304856	ROSS-003415357 - ROSS-003415367	ROSS-009660832 - ROSS-009660841
ROSS-001782470 - ROSS-001782489	ROSS-003419039 - ROSS-003419044	ROSS-009661179
ROSS-003268059	ROSS-003483172 - ROSS-003483173	ROSS-009664862
ROSS-003276744 - ROSS-003276745	ROSS-003487472 - ROSS-003487474	ROSS-009664862 - ROSS-009664867
ROSS-003277880 - ROSS-003277881	ROSS-003496253	ROSS-009666105
ROSS-003278045	ROSS-003522469 - ROSS-003522470	ROSS-009667571
ROSS-003278256 - ROSS-003278258	ROSS-003537612 - ROSS-003537613	ROSS-009667620
ROSS-003278267	ROSS-003540523	ROSS-009668638 - ROSS-009668640
ROSS-003334354	ROSS-003610162 - ROSS-003610165	ROSS-009668688
ROSS-003343202 - ROSS-003343207	ROSS-003610547	ROSS-009668796
ROSS-003382387 - ROSS-003382389	ROSS-003695819 - ROSS-003695827	ROSS-009675875
ROSS-003383658	ROSS-003705907 - ROSS-003705911	ROSS-009676232 - ROSS-009676233
ROSS-003384058 - ROSS-003384059	ROSS-003715393 - ROSS-003715406	ROSS-009676258
ROSS-003385440 - ROSS-003385442	ROSS-003715671	ROSS-009676260
ROSS-003386171 - ROSS-003386173	ROSS-003718400 - ROSS-003718407	ROSS-009676660
ROSS-003386670 - ROSS-003386686	ROSS-009494331	ROSS-009677267
ROSS-003389607	ROSS-009501052 - ROSS-009501053	ROSS-009688516
ROSS-003389615 - ROSS-003389616	ROSS-009503144	ROSS-009688583
ROSS-003389728 - ROSS-003389732	ROSS-009547818 - ROSS-009547823	ROSS-009690393 - ROSS-009690399
ROSS-003389778 - ROSS-003389779	ROSS-009556219 - ROSS-009556220	ROSS-009690394
ROSS-003389911	ROSS-009558474 - ROSS-009558475	ROSS-009698876
ROSS-003389928 - ROSS-003389938	ROSS-009559997 - ROSS-009559998	ROSS-009705518
ROSS-003389945 - ROSS-003389946	ROSS-009583583	ROSS-009705710
ROSS-003389960 - ROSS-003389961	ROSS-009584733 - ROSS-009584735	ROSS-009706035
ROSS-003390024 - ROSS-003390025	ROSS-009585472	ROSS-009720945 - ROSS-009720946
ROSS-003390050 - ROSS-003390052	ROSS-009599508 - ROSS-009599509	ROSS-009720946 - ROSS-009720954
ROSS-003390062 - ROSS-003390065	ROSS-009601555	ROSS-009720977
ROSS-003390071 - ROSS-003390075	ROSS-009601588 - ROSS-009601589	ROSS-009721062

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ROSS-009721062 - ROSS-009721064	ROSS-010099622 - ROSS-010099623	ROSS-010318431
ROSS-009721138 - ROSS-009721139	ROSS-010106819 - ROSS-010106840	ROSS-010318435
ROSS-009721521 - ROSS-009721522	ROSS-010114898 - ROSS-010114899	ROSS-010318437
ROSS-009721525	ROSS-010151565 - ROSS-010151570	ROSS-010318448
ROSS-009721539	ROSS-010157007 - ROSS-010157008	ROSS-010318459
ROSS-009722028	ROSS-010164415 - ROSS-010164417	ROSS-010318684
ROSS-009722034	ROSS-010164415 - ROSS-010164418	ROSS-010318686
ROSS-009722081 - ROSS-009722083	ROSS-010186032 - ROSS-010186033	ROSS-010319517
ROSS-009722263 - ROSS-009722299	ROSS-010209030 - ROSS-010209035	ROSS-010319520
ROSS-009722349	ROSS-010221959 - ROSS-010221960	ROSS-010319595 - ROSS-010319596
ROSS-009722606	ROSS-010224509	ROSS-010319771
ROSS-009722699	ROSS-010241185 - ROSS-010241191	ROSS-010319914
ROSS-009722781	ROSS-010262269	ROSS-010319997
ROSS-009722810	ROSS-010262295	ROSS-010320005
ROSS-009722867	ROSS-010264083	ROSS-010320024
ROSS-009723167	ROSS-010264450	ROSS-010320092
ROSS-009723181	ROSS-010265185	ROSS-010320219
ROSS-009723190	ROSS-010268031	ROSS-010320363
ROSS-009723321	ROSS-010268840	ROSS-010320544
ROSS-009723513	ROSS-010270585	ROSS-010320665
ROSS-009724001 - ROSS-009724002	ROSS-010270844	ROSS-010320773
ROSS-009724273	ROSS-010271649	ROSS-010320775 - ROSS-010320776
ROSS-009724328	ROSS-010271696	ROSS-010320798 - ROSS-010320799
ROSS-009724635	ROSS-010271701 - ROSS-010271702	ROSS-010321010
ROSS-009724653	ROSS-010272041 - ROSS-010272046	ROSS-010321321 - ROSS-010321322
ROSS-009724983	ROSS-010278634	ROSS-010321551 - ROSS-010321552
ROSS-009725036	ROSS-010279547	ROSS-010321554
ROSS-009725466	ROSS-010279751	ROSS-010321557
ROSS-009725472	ROSS-010290089	ROSS-010321701
ROSS-009725534	ROSS-010291541	ROSS-010321970
ROSS-009725538	ROSS-010291961 - ROSS-010291962	ROSS-010322226
ROSS-009725605	ROSS-010292064	ROSS-010322390
ROSS-009725612	ROSS-010292067	ROSS-010322423
ROSS-009725675	ROSS-010300414 - ROSS-010300416	ROSS-010322513
ROSS-009725677	ROSS-010300433	ROSS-010322551
ROSS-009725864	ROSS-010306683	ROSS-010322631
ROSS-009725908	ROSS-010306690	ROSS-010322787
ROSS-009731365 - ROSS-009731369	ROSS-010316865 - ROSS-010316866	ROSS-010322870 - ROSS-010322872

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ROSS-010322928
ROSS-010323018
ROSS-010323194
ROSS-010323272
ROSS-010323288 - ROSS-010323319

ROSS-010323324
ROSS-010361787 - ROSS-010361789
ROSS-010364506 - ROSS-010364509
ROSS-023018166 - ROSS-023018167
ROSS-023018180 - ROSS-023018183
ROSS-023018233 - ROSS-023018236

ROSS-023018279 - ROSS-023018281
ROSS-023018635
ROSS-023018710 - ROSS-023018739
ROSS-023018772

LegalEase Produced Documents

LEGALEASE-00018036 - LEGALEASE-00018037
LEGALEASE-00030617 - LEGALEASE-00030618
LEGALEASE-00067320 - LEGALEASE-00067323
LEGALEASE-00069484 - LEGALEASE-00069487
LEGALEASE-00078065 - LEGALEASE-00078083
LEGALEASE-00108391 - LEGALEASE-00108392
LEGALEASE-00123981 - LEGALEASE-00123982
LEGALEASE-00132781 - LEGALEASE-00132782
LEGALEASE-00132970 - LEGALEASE-00132971
LEGALEASE-00139081 - LEGALEASE-00139082
LEGALEASE-00139169 - LEGALEASE-00139170

LEGALEASE-00166082 - LEGALEASE-00166083
LEGALEASE-00171823
LEGALEASE-00171828 - LEGALEASE-00171831
LEGALEASE-00043224 - LEGALEASE-00043225
R-LEGALEASE-00028693 - R-LEGALEASE-00028694
R-LEGALEASE-00029691 - R-LEGALEASE-00029693
R-LEGALEASE-00048728 - R-LEGALEASE-00048737
R-LEGALEASE-00048772 - R-LEGALEASE-00048776
R-LEGALEASE-00048928 - R-LEGALEASE-00048932
R-LEGALEASE-00049260
R-LEGALEASE-00049399

R-LEGALEASE-00049652 - R-LEGALEASE-00049664
R-LEGALEASE-00050673
R-LEGALEASE-00050718 - R-LEGALEASE-00050721
R-LEGALEASE-00067404
R-LEGALEASE-00067463 - R-LEGALEASE-00067465
R-LEGALEASE-00067492 - R-LEGALEASE-00067493
R-LEGALEASE-00067565 - R-LEGALEASE-00067569
R-LEGALEASE-00101636 - R-LEGALEASE-00101642
R-LEGALEASE-00140064 - R-LEGALEASE-00140078
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Depositions

Deposition of Khalid Al-Kofahi, April 8, 2022
Deposition of Andrew Arruda, March 30, 2022 with exhibits
30(b)(6) Deposition of Christopher Cahn, May 12, 2022
30(b)(6) Deposition of Tariq Hafeez, May 26, 2022 with exhibits
Deposition of Mark Hoffman, March 16, 2022 with exhibits
30(b)(6) Deposition of Erik Lindberg, March 22, 2022 with exhibits
30(b)(6) Deposition of Andrew Martens, March 25, 2022 with exhibits
30(b)(6) Deposition of Isabelle Moulinier, July 1, 2022 with exhibits
30(b)(6) Deposition of Jimoh Ovbiagele, April 12, 2022 with exhibits
30(b)(6) Deposition of Sean Shafik, April 22, 2022 with exhibits
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30(b)(6) Deposition of Edward Walters, March 1, 2022 with exhibits
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Plaintiffs and Counterdefendants Thomson Reuters Enterprise Centre GmbH and West Publishing Corporation's Third Set of Interrogatories to Defendant and Counterclaimant ROSS Intelligence Inc., February 4, 2022

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Appendix B - Rebuttal

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Appendix C - Rebuttal

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DR. COX'S OPINIONS ON FAIR USE

Rebuttal Schedule 1.0

Dr. Cox's Opinions

- 1 Westlaw Content is used in very different ways by Plaintiffs compared to ROSS, to the extent that such content could be considered to be used by ROSS.
- 2 Westlaw Content is licensed by Plaintiffs to its customer-licensees to actually undertake legal research through manual interaction and engagement with Westlaw Content. I call this the “Interactive” use of Westlaw Content.
- 3 In contrast, ROSS used Westlaw Content as a particular component of its training material for an Artificial Intelligence program that enables users to enter natural language search queries and returns solely the text of public domain judicial opinions. It is the Artificial Intelligence program that is used by ROSS customer-licensees to undertake legal research.
- 4 As a result, Westlaw Content is properly seen as being used by ROSS in a market that is higher up in the supply chain from the provision of legal research services. ROSS does not use Westlaw Content as a substitute for Plaintiffs’ customer-licensees’ Interactive use of Westlaw Content.
- 5 For Plaintiffs, Westlaw Content provides a structure to their corpus of law and it is that human-generated structure that guides the research undertaken by Plaintiffs’ customer-licensees. In contrast, on ROSS’s legal research platform the search is controlled by an Artificial Intelligence program that is not mediated and guided by any preestablished, human-generated structure of the law.
- 6 A further indication of the large difference between ROSS’s use of the Westlaw Content and the Interactive use of Westlaw Content is that Plaintiffs are only accusing ROSS of infringing less than 0.1% of all headnotes. Westlaw Content is intentionally built to be extensive so that it provides a structure and direction over a significant part of the corpus of law. In contrast, ROSS’s system is designed to be able to address the corpus of law without the mediation of such a structure. It is possible that legal research undertaken on an AI-based platform such as that of ROSS will differ from those of West.
- 7 ROSS’s use of the Westlaw Content did not have a negative impact on the value of Westlaw Content to persons who attach importance to the Interactive use of Westlaw Content. Even if ROSS had been able to stay in business and maintain its growth, it is probable that Plaintiffs would have retained customers who attach importance to the structure and to the Interactive use of Westlaw Content. Customers with this preference for Interactive use would, consequently, tend to be less price sensitive such that Plaintiffs would be able to increase the price of access to Westlaw Content and still preserve this segment of its customer base. Without opining on the number of such relatively price-inelastic customers, it is possible that, as a significant portion of customers who do not attach importance to the Interactive use of Westlaw Content switch away from West, it could still earn higher profits on its loyal customers.
- 8 Headnotes, part of Westlaw Content, were also used internally by Plaintiffs as a particular component of Plaintiffs’ training material for a very specific portion of their Artificial Intelligence program, Westsearch Plus. That specific portion of the program is designed to return *only* headnotes (and does *not* return relevant portions of judicial opinions.) Specifically, Plaintiffs used the headnotes as the answers in the question-answer pairs that were used as part of the training material for Plaintiffs’ Artificial Intelligence software, software that was designed to identify only headnotes in response to natural language legal questions. I call this the “Answer Components” use of headnotes.
- 9 As noted, ROSS also used headnotes as a component of its training material for its Artificial Intelligence program. But in contrast to Plaintiffs’ use, the headnotes were used by ROSS as the starting point to generate questions in question-answer pairs that make up ROSS’s Artificial Intelligence training material, *not* answers. Also, ROSS’s program returned only the text from judicial opinions. ROSS’s program did not return more limited, structured and constrained content such as headnotes, key numbers, the WKNS or any other Westlaw Content.

Thomson Reuters Enterprise Centre GmbH and West Publishing Corporation v. ROSS Intelligence, Inc.

DR. COX'S OPINIONS ON FAIR USE

Rebuttal Schedule 1.0

Dr. Cox's Opinions

- 10 Thus, ROSS's use of headnotes is very different than Plaintiffs' Answer Components use of headnotes. ROSS's use of headnotes is not a substitute for the Answer Components use of headnotes. And ROSS's use of headnotes does not have an impact the value of headnotes for persons who attach importance to the Answer Components use of headnotes. Again, the segment of persons who do attach importance to the Answer Components use of headnotes—whatever its size—would not be affected by ROSS's Answer Components use of headnotes and would be price insensitive even in the face of new options in the market, such as ROSS's use of headnotes.
- 11 Moreover—and perhaps most significantly—I have seen no evidence in the record that Plaintiffs actually intended to—or ever did—market, license, or sell their headnotes to be used as answers in question-answer pairs. I also did not see evidence in the record that Plaintiffs actually intended to—or ever did—market, license, or sell their headnotes to be used as questions in question-answer pairs. Plaintiffs' discovery responses in the case discussed only uses of the headnotes for Manual Research and no other purpose. Plaintiffs' corporate witness, Isabelle Moulinier, responsible for AI research, testified that she was unaware of any licensing market for headnotes in training AI programs. Indeed, I understand that Plaintiffs nowadays only permit electronic access to their headnotes for those who seek to use the headnotes for Manual Research (i.e., via the online platform.)
- 12 ROSS's use of headnotes thus definitionally could not have had an impact on the market for or value of the Answer Components use of headnotes, because Plaintiffs did not put—and never intended to put—headnotes into the market as Answer Components in particular or for AI-training related applications at all. Further, ROSS's use of headnotes does not in any way prevent, preclude or impair Plaintiffs' internal use of headnotes for any purpose and thus do not have any impact on such internal use.
- 13 ROSS did not use individual West key numbers or the WKNS in any way, including in training Artificial Intelligence. The questions that ROSS used to train its Artificial Intelligence program were selected randomly, and thus did not reflect any organization of the WKNS. Given this, ROSS did not have and could not have had an impact on any market for or value of key numbers or the WKNS.
- 14 By providing an Artificial Intelligence software alternative to the search of the public domain of judicial opinions and enriching the range of possible results all at a much lower cost than Plaintiffs, ROSS increased the market for access to that material for that portion of the public not able or willing to pay the cost imposed by Plaintiffs for such access. In this way, ROSS expanded the analysis of judicial opinions beyond what Plaintiffs would be able to achieve and that expansion did not likely have a negative impact on the value of the asserted Westlaw Content.

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EXHIBIT 67

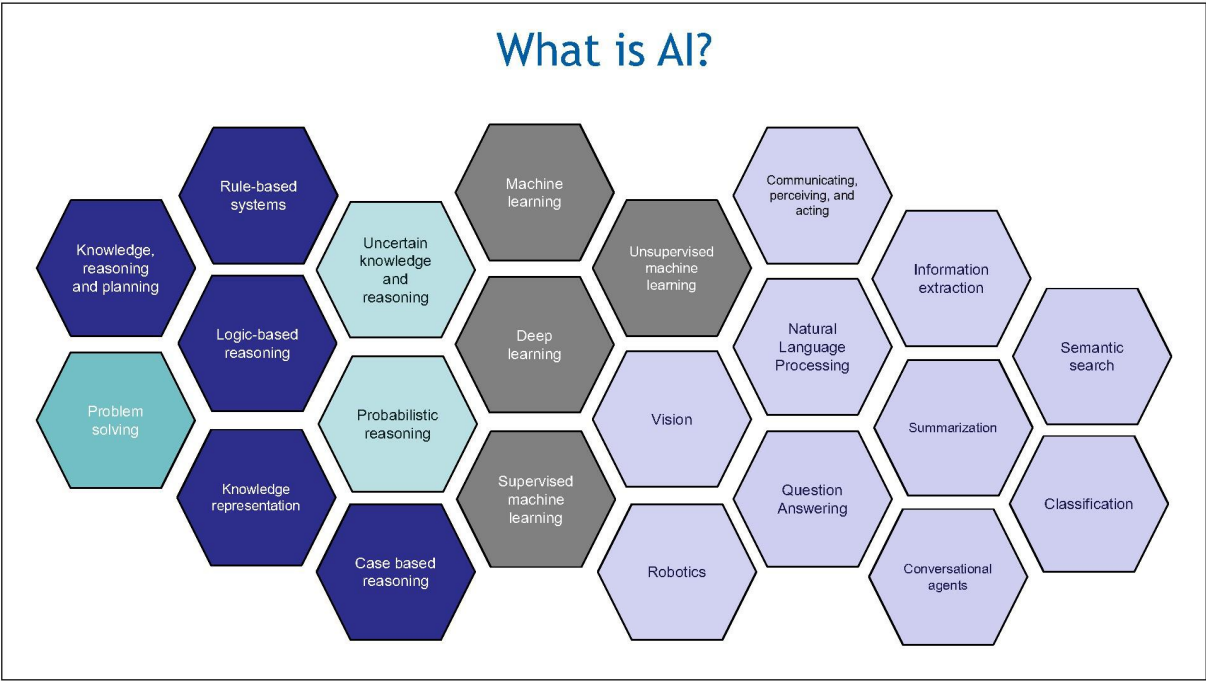


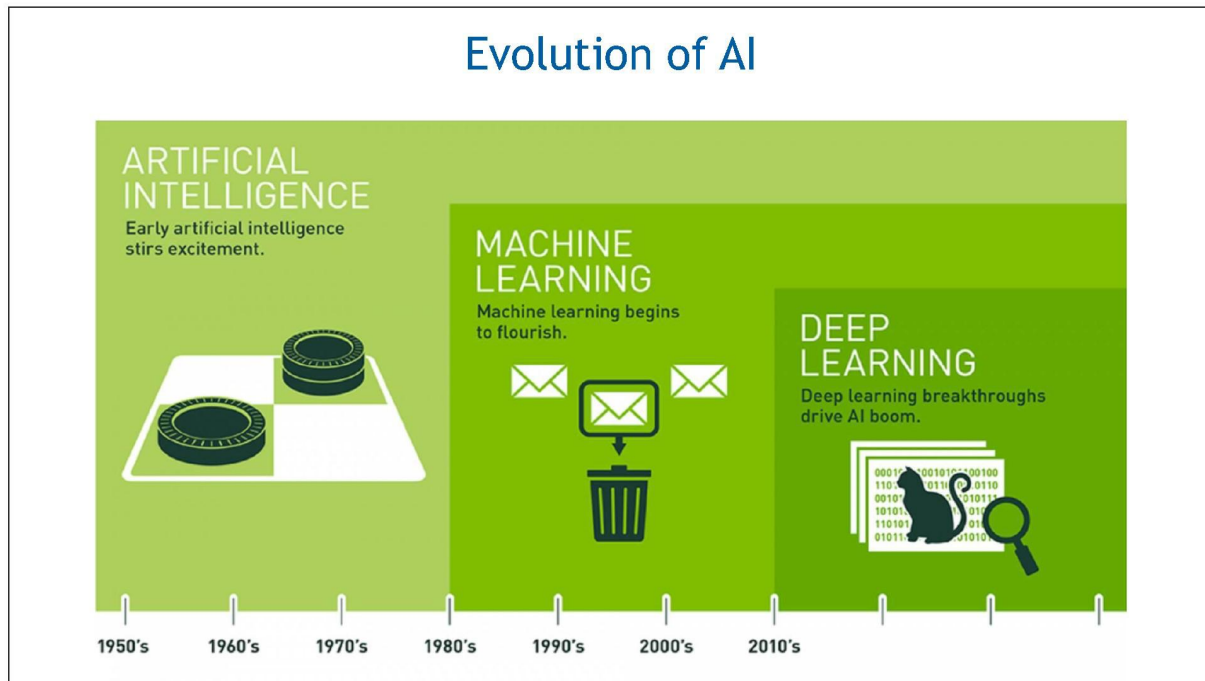
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Thomson Reuters: Artificial Intelligence & Westlaw Discussion

Erik Lindberg, Westlaw Product Development
May 2022







Succeeding with AI



In this world of open source [AI technology], the scarce resources are:

Data Among leading AI teams, many can likely replicate others' software in, at most, 1-2 years. But it is exceedingly difficult to get access to someone else's data. Thus **data, rather than software, is the defensible barrier for many businesses.**

Talent Simply downloading and "applying" open-source software to your data won't work. AI needs to be customized to your business context and data. This is why there is currently a war for the scarce AI talent that can do this work.

Andrew Ng

Former Chief Scientist at Baidu,
Founder of Google Brain project,
Adjunct Professor at Stanford



Succeeding with AI

Attorney Editors

- 700+ attorney editors
- Many years of professional experience
- Expertise in 40+ practice areas

Data

- 100+ years of editorial enhancements
- Leading legal taxonomy (Key Number System)
- Leading legal and tax secondary sources
- Sophisticated citation mapping with KeyCite

Research Scientists

- 80+ at Thomson Reuters Labs
- Specialties in AI, involving Machine Learning & Deep Learning, Natural Language Processing, Information Retrieval, and Computational Linguistics
- Deep experience with legal and tax content, taxonomies, and citation networks

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Bankruptcy Courts

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100 U.S. 208
United States Bankruptcy Court, D. Massachusetts

In re Neil D. JACKSON and Ann E. JACKSON, Debtors,
GANIS CORPORATION OF CALIFORNIA, Plaintiff,
vs.
Neil D. JACKSON and Ann E. JACKSON, Defendants.

Bankruptcy No. 87-2330-040
Adv. No. 87-2342
Pg. 12, 1086

Synopsis

Creditor filed adversary complaint seeking determination that debt was nondischargeable. The Bankruptcy Court, James H. Garvey, Chief Judge, held that creditor failed to establish that debtors either intended to deceive or acted so recklessly as to warrant finding of intent in failing to accord investment attention it warranted, signing documents containing misrepresentations or blank documents and relying on accountant and attorney, and thus, resulting debt, which supposedly was secured by boat, but which actually was secured by unfinished hull of boat, was not nondischargeable as a debt obtained by false representation or by false written statement of debtors' financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A, B).

The Jacksons, on the other hand, portray themselves as innocent victims of a master white collar criminal. They note that they never received a dime as a result of the Ganis transaction. On the contrary, they paid out their last two years of their assets, including their marital home. They admit that their conduct in failing to carefully review documents, including blank documents and signing without an attorney to represent them was stupid and reckless. However, they argue that they had no reason to suspect Garfield when they had known and trusted for many years prior to the Ganis transaction. Accordingly, they argue that Ganis has failed to meet its burden of proof on the issue of intent to deceive. The Court agrees.

Held that attempts to discharge are to be reviewed strictly in light of 11 U.S.C. § 523(a)(2)(A) and (B). The Court is unable to conclude from the evidence presented that Ganis proved that the Jacksons intended to deceive Ganis or acted so recklessly as to warrant such a finding. "The Court after hearing the testimony of both debtors, is convinced that the Jacksons were victims as well as Ganis. Clearly, the Jacksons' conduct in failing to accord the transaction the attention it warranted in signing documents containing misrepresentations or blank documents, and in relying on Garfield for evidence of proper review is unimpeachable. But it does not take to the level of fraud."

The Court is persuaded by the Debtors' testimony that they had no reason to suspect Garfield. Although their conduct cannot be condoned, it is not unreasonable since it was predicated on the advice of a trusted attorney and an accountant. The Court is convinced that the Debtors had every intention of repaying Ganis from the profits generated by shares of the "School House". Moreover, the Court places little weight on the inconsistencies in Dr. Jackson's sworn statements in the light of all the other evidence.

2 Bankruptcy

Creditor failed to establish that debtors either intended to deceive or acted so recklessly as to warrant finding of intent in failing to accord investment attention it warranted, signing documents containing misrepresentations or blank documents and in relying on accountant and attorney, and thus, resulting debt, which supposedly was secured by boat, but which actually was secured by unfinished hull of boat, was not nondischargeable as a debt obtained by false representation or by false written statement of debtors' financial condition. Bankr.Code, 11 U.S.C.A. § 523(a)(2)(A, B).

- ← Facts
- ← Law
- ← Holding
- ← Reasoning

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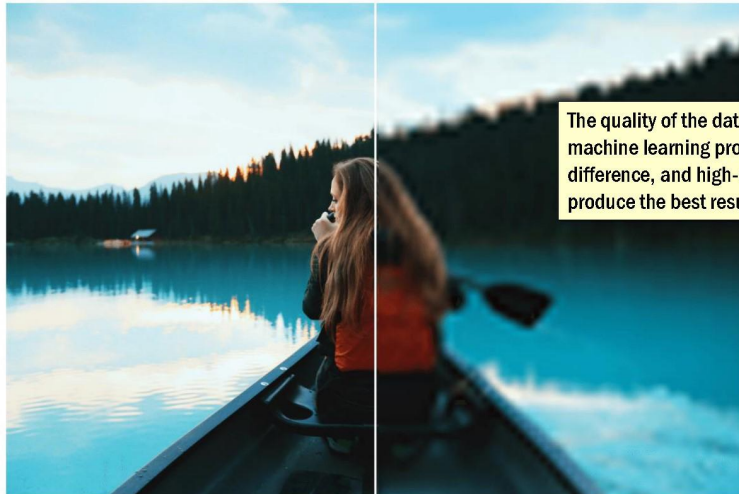
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	<input type="checkbox"/> 149E ENVIRONMENTAL LAW	<input type="checkbox"/> 300 PILOTS

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Low resolution

Low resolution legal data

Text

Links to Cases

Briseno v. Con Agra Foods
844 F.3d 1121 (9th Cir. 2017)

...One rationale the Third Circuit has given for imposing an administrative feasibility requirement is the need to mitigate the administrative burdens of trying a Rule 23(b)(3) class action. Courts adjudicating such actions must provide notice that a class has been certified and an opportunity for absent class members to withdraw from the class. See *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011); accord FED. R. CIV. P. 23(c)(2)(B). The Third Circuit largely justifies its administrative feasibility prerequisite as necessary to ensure that compliance with this procedural requirement does not compromise the efficiencies Rule 23(b)(3) was designed to achieve. See *Shelton v. Bledsoe*, 775 F.3d 554, 562 (3d Cir. 2015); *Carrera*, 727 F.3d at 307.

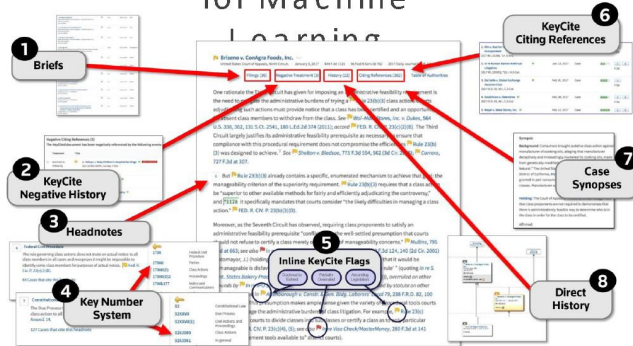
But Rule 23(b)(3) already contains a specific, enumerated mechanism to achieve that goal: the manageability criterion of the superiority requirement. Rule 23(b)(3) requires that a class action be "superior to other available methods for fairly and efficiently adjudicating the controversy," and it specifically mandates that courts consider "the likely difficulties in managing a class action." FED. R. CIV. P. 23(b)(3)(D).

Moreover, as the Seventh Circuit has observed, requiring class proponents to satisfy an administrative feasibility prerequisite "conflicts with the well-settled presumption that courts should not refuse to certify a class merely on the basis of manageability concerns." *Mallins*, 795 F.3d at 663; see also *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 140 (2d Cir. 2001) (Sotomayor, J.) (holding that refusal to certify a class "on the sole ground that it would be unmanageable is disfavored and 'should be the exception rather than the rule' " (quoting *In re S. Cent. States Bakery Prods. Antitrust Litig.*, 36 F.R.D. 407, 423 (M.D. La. 1980))), overruled on other grounds by *In re IPO Sec. Litig.*, 471 F.3d 24 (2d Cir. 2006), and superseded by statute on other grounds as stated in *Attenborough v. Constr. & Gen. Bldg. Laborers' Local 79*, 238 F.R.D. 82, 100 (S.D.N.Y. 2006). This presumption makes ample sense given the variety of procedural tools courts can use to manage the administrative burdens of class litigation. For example, Rule 23(c)

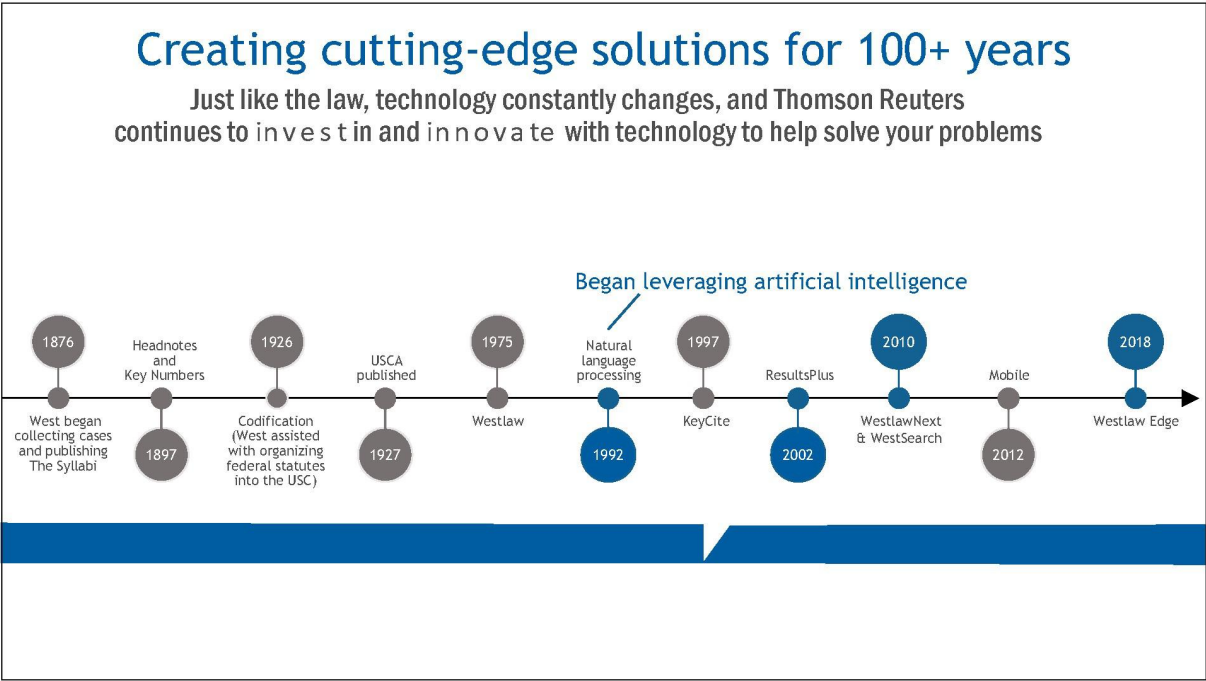
- All legal content inherently has some patterns that AI can pick up upon
- The case text, with links to cited and citing cases provides just the blurriest glimpse into what's really going on with this case



High Potential for Machine Learning



TRCC-00992683



AI in Thomson Reuters Products

Thomson Reuters
has a long history
of integrating AI
algorithms into
products

Westlaw Is Natural (WIN) search is one of the first commercial implementations of statistical ranking in 1992

WestSearch in WestlawNext uses machine learning for learning to rank in 2010

Checkpoint Catalyst uses machine learning for ranking in 2013

WestSearch Plus adds deep learning to represent words and documents in 2018

TR Labs conducts early experiments with BERT models on question answering in 2018

Westlaw Edge introduces Quick Check, a document analysis tool using ML components in 2019

Checkpoint Edge introduces a BERT-based approach for ranking into a Thomson Reuters product in 2020

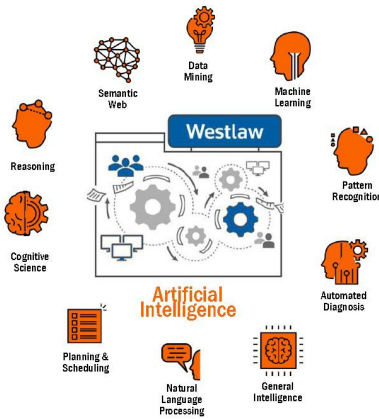
WestSearch Plus incorporates BERT-based models to expand coverage and quality of question answering in 2022

TR Labs continues to adapt AI and deep learning tools in support of internal editorial teams and future product features

For artificial intelligence to provide the best outcomes

DATA

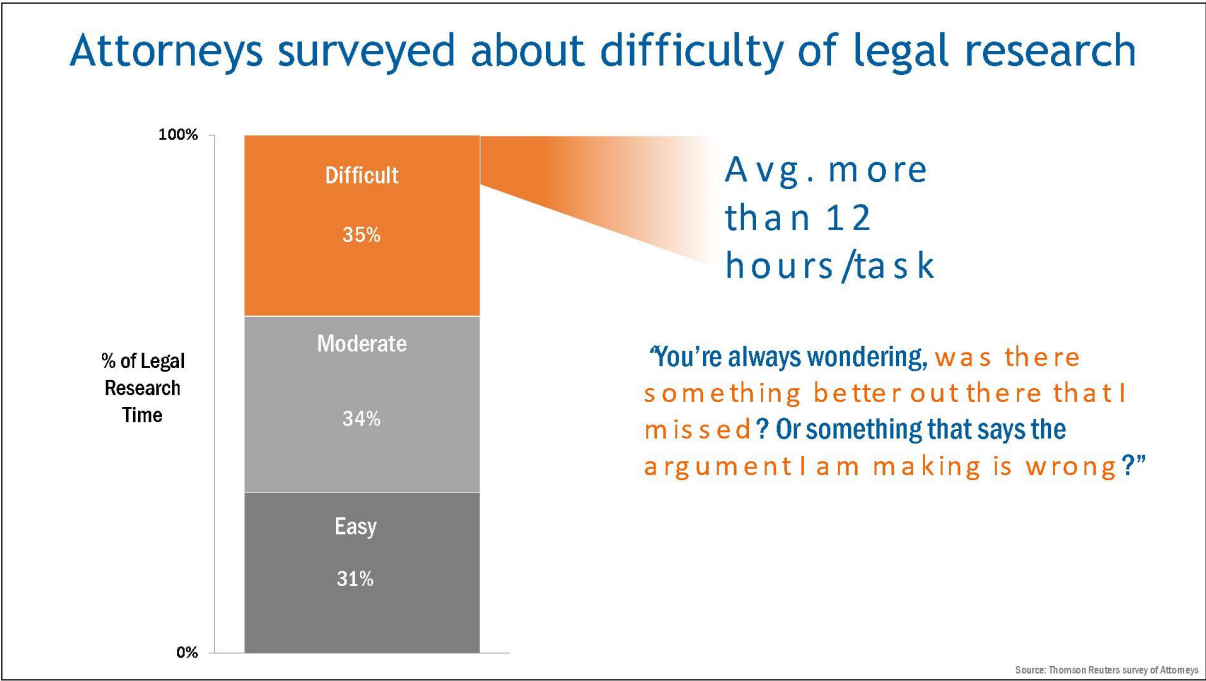
The application of AI can only be as good as the quality of data collection



TALENT

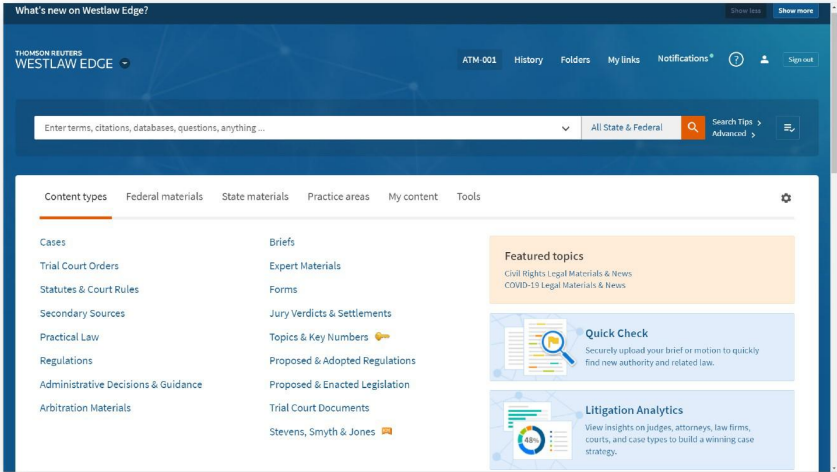
AI is a hands-on process; knowing the data & its interrelationship is invaluable when building AI





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Sophisticated Document Analysis



WestSearch Plus on Westlaw Edge

A system containing several machine-learned models incorporating NLP that was trained on hundreds of thousands of Question-Answer pairs graded by Thomson Reuters attorney-editors.

This allows Westlaw Edge to suggest commonly asked legal research questions and provide concise responsive answers.

Q : Is a settlement agreement enforceable if it is not signed by all parties?

A : A written settlement agreement is not enforceable unless it is signed by all the parties to the agreement, not merely the parties against whom the agreement is sought to be enforced

Q : Can a court intervene if administrative agency conduct is unreasonable?

A : Considerable latitude must be afforded administrative agencies to perform functions delegated to them under the law, and courts should not intervene unless the agency's conduct is clearly unreasonable and arbitrary

Q : Does the attorney client relationship between a corporation and attorney extend to shareholders?

A : In cases of closely-held corporations, a law firm's representation of a corporation does not create an attorney-client relationship between the law firm and any of the corporation's shareholders

WestSearch Plus on Westlaw Edge

WestSearch Plus
uses ML & NLP to
understand the
researcher's
question and to
find the right
answers

Keywords, Stemming, Phrases

Synonyms & Equivalencies

Lexical Semantics / Dictionary Definitions / POS (parts of speech)

Named Legal Entity & Concept Recognition

Distributional Semantics & Word Sense Disambiguation

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- A large language model, RoBERTa (Deep Learning), is fine-tuned on legal question-answer pairs

Discourse Features: Intent

- Determining the type of answer required based on the type & structure of the question asked

What is the burden of proof on [PARTY] to establish [CLAIM]?
Burden is on [PARTY] to establish [CLAIM] by [STANDARD]

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Does fraudulent concealment toll the statute of limitations?

Michigan

To constitute a fraudulent concealment, for purposes of tolling a statute of limitations, there must be concealment by the defendant of the existence of a claim or the identity of a potential defendant, and the plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment.

📁Doe v. Roman Catholic Archbishop of Archdiocese of DetroitHelpful?YesNo

Court of Appeals of Michigan · December 21, 2004 · 264 Mich.App. 632 · 692 N.W.2d 398

Associated content

MI ST 600.5855 · Fraudulent concealment of claim or identity of person liable, discovery · See section for effective date

MI ST 600.5805 · Injuries to persons or property · June 12, 2018

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Cases (111)

1 - 100 >🔍Sort: Relevance

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Related documents

☐ 📁 1. Doe v. Roman Catholic Archbishop of Archdiocese of Detroit

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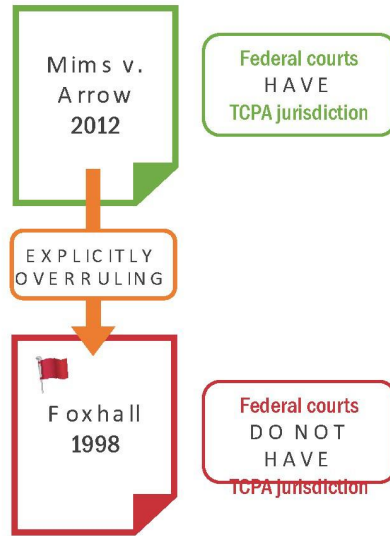
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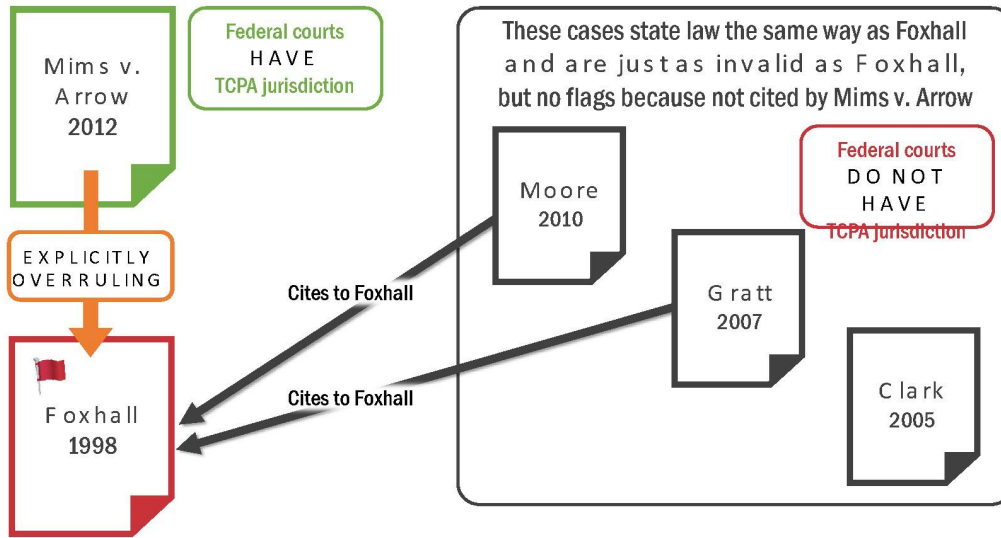


KeyCite Overruling Risk: Goes beyond explicit citation

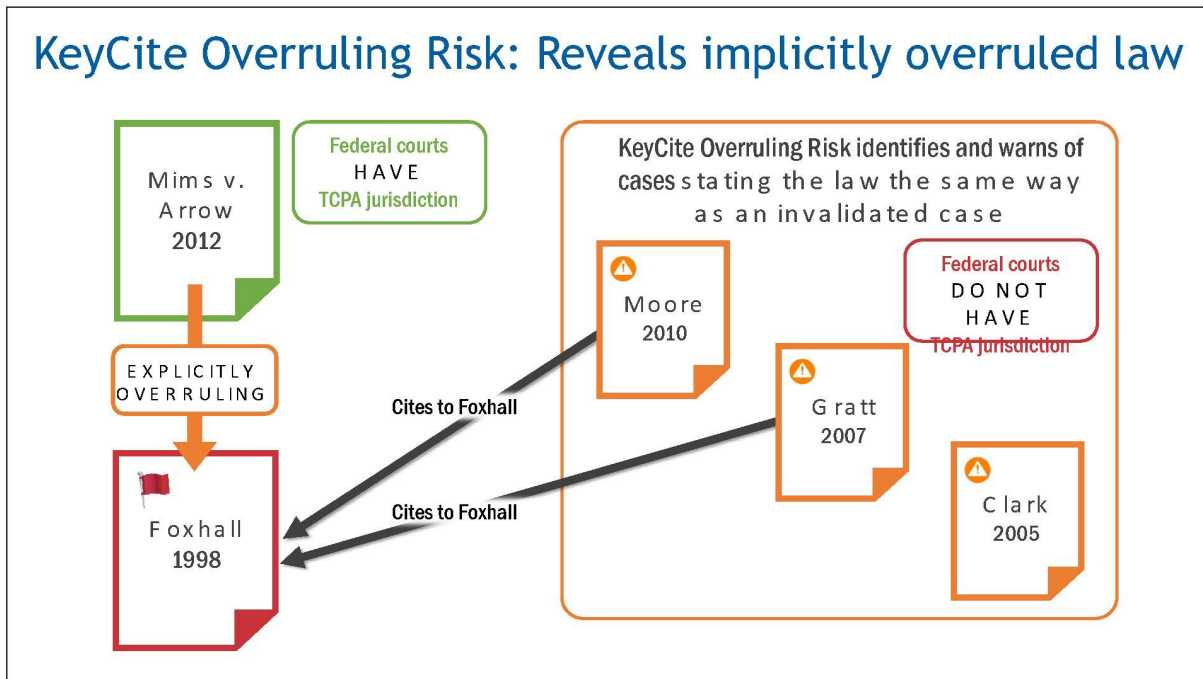
Do federal courts have
Telephone Consumer Protection
Act jurisdiction?

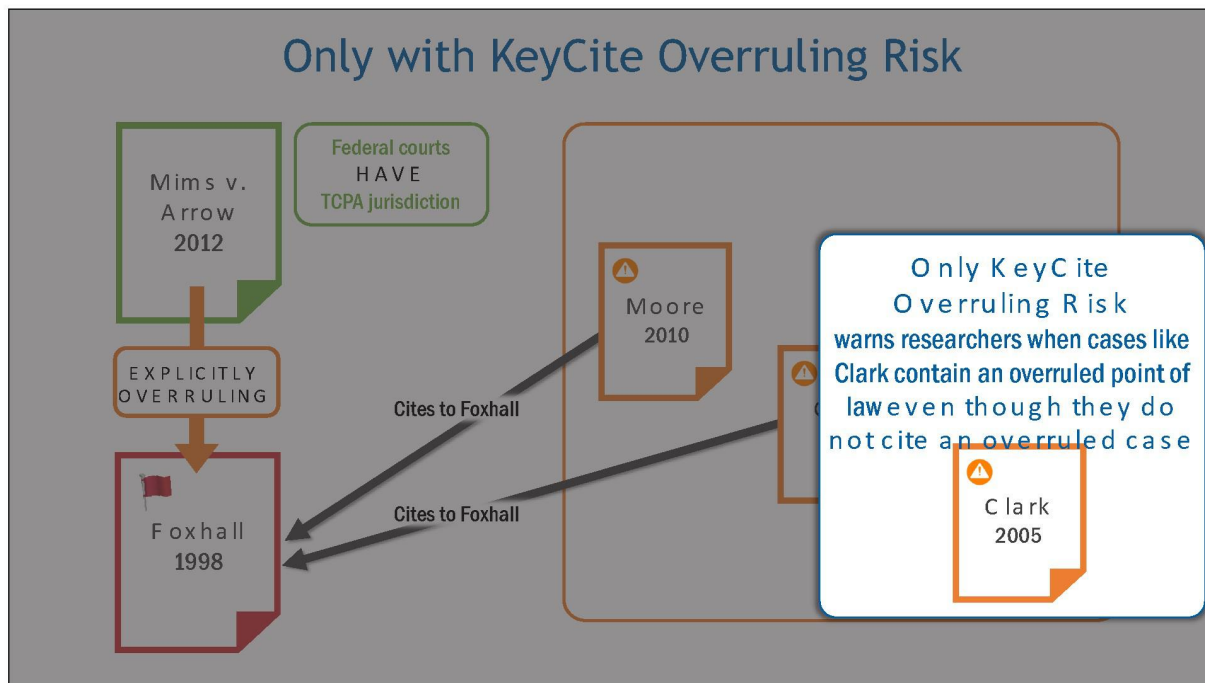


Traditional citators miss implicitly overruled law

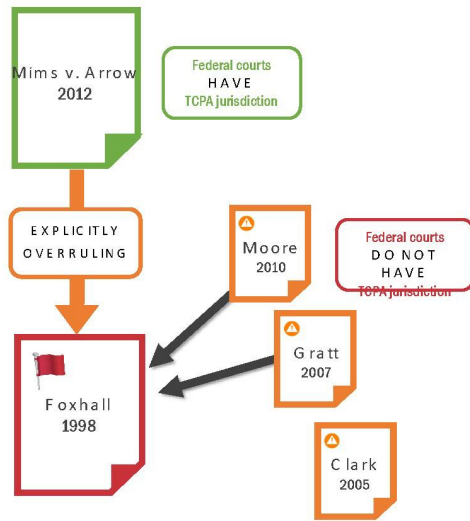


KeyCite Overruling Risk: Reveals implicitly overruled law

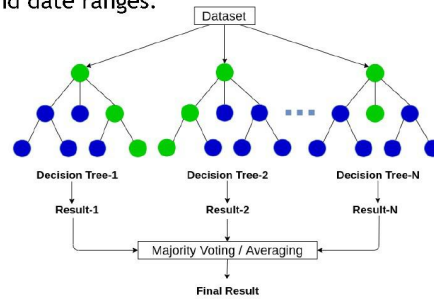




To find the right cases to apply the warning, we used machine learning and natural language processing, training the system iteratively



Westlaw Attorney Editors analyzed over 13,000 citations to 1,809 overruled cases, covering multiple legal issues, jurisdictions, popularity, and date ranges.



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Clark v. Erickson Elec. Equipment Co. Monitor Municipal Court, Ohio. February 6, 2005. Not Reported in N.E.2d. 2005 WL 473381. (Page 3 of 3 pages)

Document Filings (0) Negative Treatment (1) History (0) Citing References (1) Table of Authorities Citing References (0) Powered by KeyCite Fullscreen

KeyCite: Table of Authorities (1) 1-1 Sort By: Alphabetically by Title

	Referenced Title	Type	Depth	Quoted	Page Number
<input type="checkbox"/> Treatment	1. Reichenbach v. Financial Freedom Ctrs., Inc.	Case	1		1
<input type="checkbox"/> Cited	2004 WL 2634624, 2004 Ohio-6164, Ohio App. 6 Dist., 2004, (NO. L-03-1357)				
	COMMERCIAL LAW - Consumer Protection, Individual, who received single pre-recorded telephone solicitation from company, had cause of action against company pursuant to TCPA.				

JUDGMENT ENTRY

EBETS, J.

This decision is rendered on the basis of a claim by plaintiff Patricia Clark against Erickson Electric Equipment Co., under the Telephone Consumer Protection Act ("TCPA"). Plaintiff's allege that on or about January 3, 2001, February 5, 2001, July 29, 2001 and October 8, 2002, she received five (5) unsolicited advertisements on her facsimile ("fax") machine for electric motors, from Erickson Electric Equipment Co.

The TCPA prohibits the transmission of unsolicited fax advertisements unless the sender first obtains the "prior express invitation or permission" of the recipient. 47 U.S.C. § 227(a)(4); 47 U.S.C. § 227(b)(1)(C). In addition, the TCPA provides for a private right of action with exclusive state court jurisdiction. 47 U.S.C. § 227(b)(3). No actual damages are required in order to have a cause of action as provided by the TCPA. Damages awarded under the TCPA are remedial, and the statutory amounts are "set to be fair". 137 Cong. Rec. S.16,204, 16,205-6 (daily ed. Nov. 7, 1991).

In enacting the TCPA, the U.S. Congress made a legislative determination that the appropriate damages for violating 47 U.S.C. 227 was \$500 per violation or, in the court's discretion, \$1,000 per violation if the violator acted "willfully". 47 U.S.C. § 227(b)(2). Congress did not have any specific definition of "willfully" in the TCPA, but the Supreme Court has held that "willfully" means "with knowledge that the conduct is unlawful".

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of the Michigan Supreme Court
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Confirmed May 2022

KeyCite Overruling Risk

“

This tool literally would save hours and made me realize that I have been doing this kind of research wrong this whole time.

– Sr. Associate, Am Law 25

“

This would be invaluable. Every attorney's greatest fear is to cite law that is no longer good.

– Associate, Am Law 50

- Prevent reliance on invalidated law, even in situations where the case has not cited to overruled authority
- Save hours of research time
- Minimize risk of inaccurate court filings

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Sophisticated Document Analysis



“You’re always wondering, was there something better out there that I missed?”*

“The Court is quite troubled by Defendant’s utter failure to cite to *Cunningham*, which plainly controls the disposition of this motion.”

Defendant expressed “regret[] that it missed controlling precedent on punitive damages in federal court”

The Court is also troubled by the fact that defendants did not cite *Okurume* until the reply... [if] defendants were aware of *Okurume* at the time they filed this motion, withholding it for reply would be unfair and improper.

The plaintiff’s delay in seeking amendment was...due to a failure to research and therefore a lack of diligence....[a]ccordingly, the plaintiff’s first argument fails.

More troubling to the Court is that Plaintiff’s brief fails to cite recent, controlling Eighth Circuit caselaw which rejects this claim.

“Defendant is presenting...newly discovered cases...the Court now believes that, if these cases had been presented at the appropriate time, the Court might have reached a different conclusion in this matter.”

“Google also has not shown why diligent legal research would not have revealed this issue sooner. Google’s motion for leave ‘to provide further elaboration’ of its Section 101 invalidity contentions is DENIED.”

“Defendant was earlier represented in this Court by one of the largest and most able law firms in this state. As such, Defendant... could have presented the appropriate caselaw in the due course of research.”

In their briefing...the parties overlook controlling Nevada precedent that is dispositive of this appeal...[the] offer of judgment [is] invalid as a matter of law”

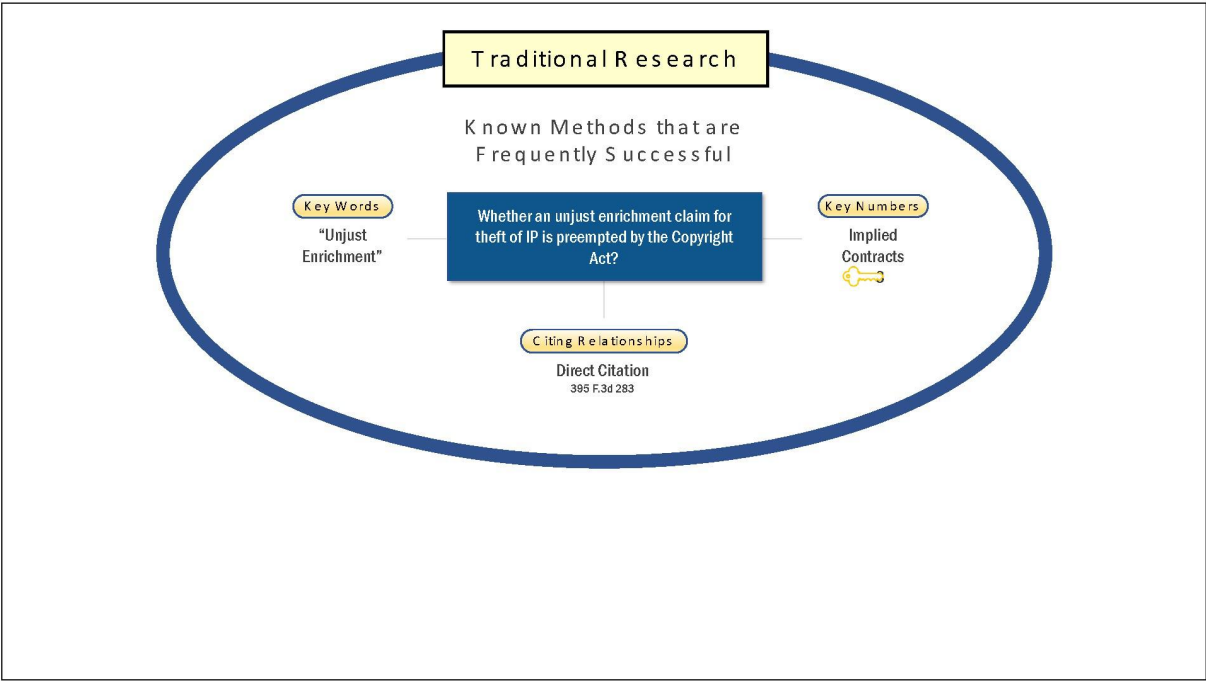
“We remind counsel of their ethical obligation to know the legal precedent of this Court and to base their legal arguments on that precedent. Where counsel fails to do so...we will not hesitate to impose sanctions...[and] this appeal comes mighty close to that point”

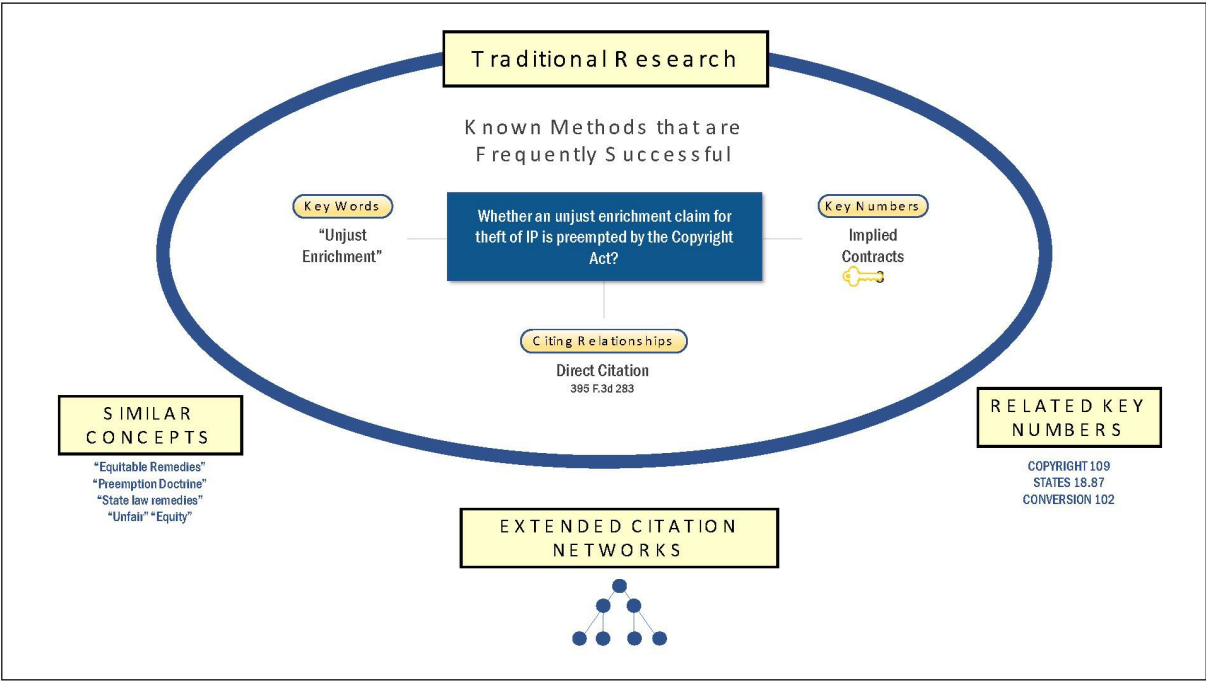
“It is troubling that neither Plaintiffs nor Defendants cite to any of these authorities. The Court reminds Counsel that failure to cite obviously controlling authority is sanctionable conduct.”

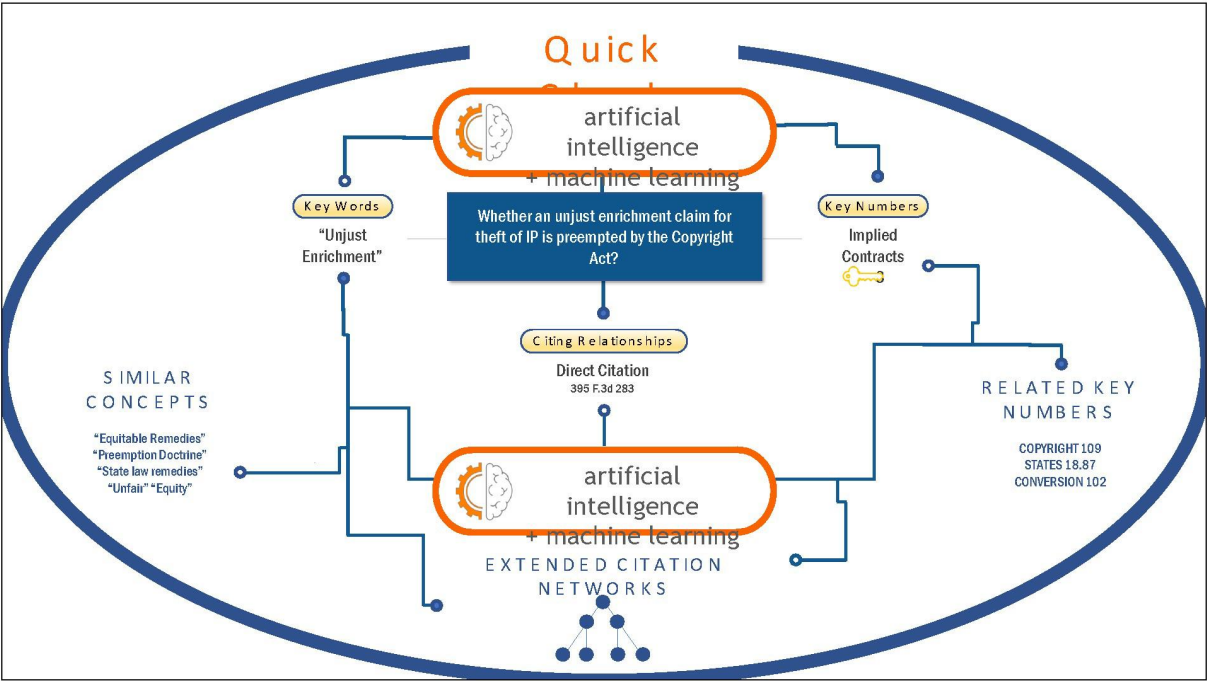
We...strongly admonish defendant for failing to cite *Cisneros* in its opening brief...by failing to do so, defendant eschewed its obligation of fairness and candor to the court.”

“We do not imply that either counsel acted knowingly or intended to mislead when they failed to cite *Yang*. We nevertheless remind counsel of their obligation.”

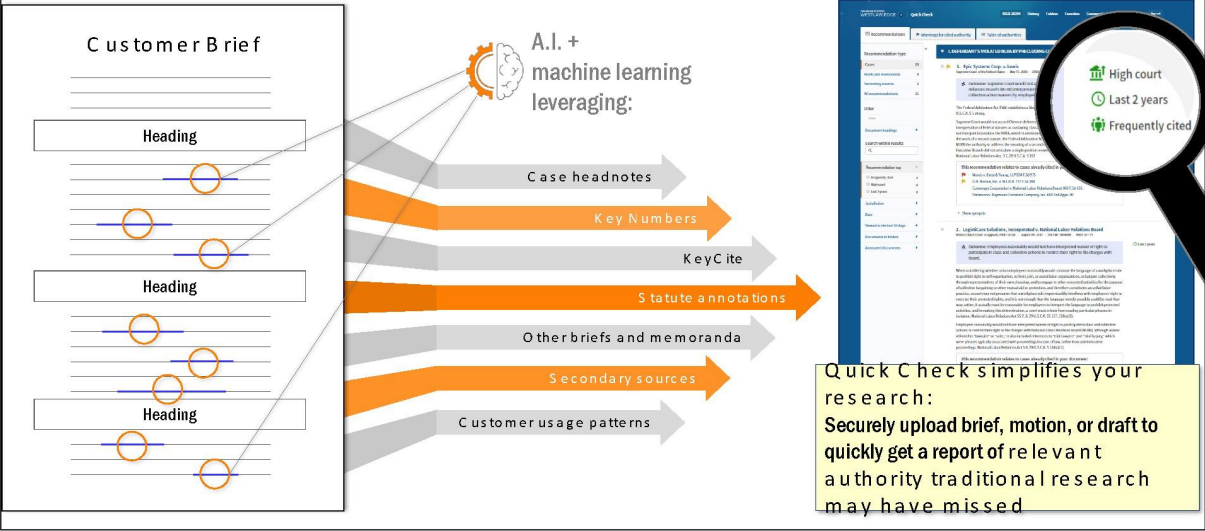
*Source: Thomson Reuters survey of 192 Attorneys (2018)





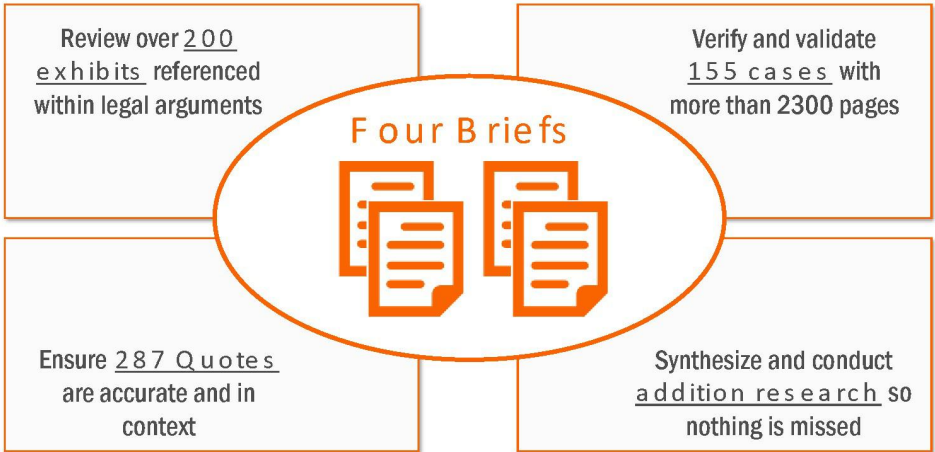


Quick Check: Sophisticated Document Analysis



Reviewing Complex Litigation is time intensive

Requires validation, confirmation and review of legal authority and related evidence



Example: Plaintiffs brought a Class-Action alleging an organized scheme to defraud consumers in violation of the statutory and common law claims

Quick Check integration with Case Center

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Please choose up to 6 documents you would like to be analyzed.

Defendant MSJ to Compel Arbitration

Plaintiff Cross-Motion for SJ and Op...

Select document or drag/drop

Select document

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Upload multiple filings to generate an easy-to-view report, quickly comparing citations relied upon by both parties, and view relevant omitted authority

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Bacon v. Aris

Case 2:16-cv-05099-KM

1 of 47 PageID: 868

ABIGAIL BACON, ARCADIA
JEANNINE DEVRIES, LISA GE

Exhibits

A: Defendant MSJ to Compel Arbitration

A1: Exhibits

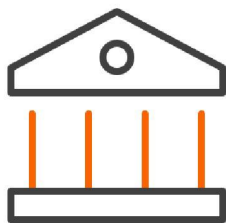
B: Plaintiff Cross-Motion for SJ / Opposition to Defendant MSJ

B1: Exhibits

C: Defendant Response

C1: Exhibits

Thomson Reuters Case Center



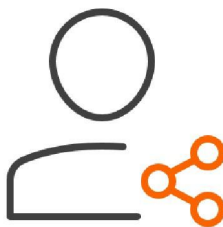
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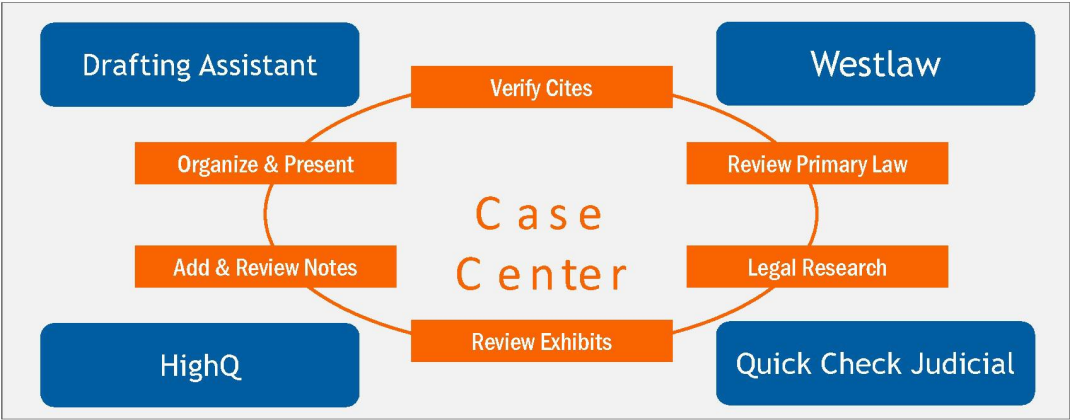


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- Examine an early draft of a brief or opinion to finish research much faster
- Double-check your work before filing to see if you missed anything important
- Update an older brief that may cite outdated law or require newer authority


Check your work



Analyze an opponent's work

- Identify potential issues with the opponent's cited authority and quotations
- See relevant authority contrary to the positions in the opponent's filing
- Get analysis of your own work to anticipate attacks or spot weaknesses

Analyze an opponent's work



Quick Check Judicial

- See the same analysis of briefs from both parties that judges can see
- Review the most relevant authority for the legal issues that neither party cited
- Discover issues with the citations and quotations relied upon by the parties

Quick Check Judicial

Only Quick Check offers 3 different workflows to align with your specific situation

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Quick Check for analyzing opponent's work

The screenshot shows a legal research platform. The top navigation bar has tabs for 'Warnings for cited authority', 'Quotation analysis', 'Table of authorities', and 'Recommendations' (which is highlighted with a red circle). The left sidebar contains filters for 'Recommendation type' (Cases: 44, Briefs and memoranda: 6, Secondary sources: 8, All recommendations: 53), 'Filter' (Clear), 'Document headings' (+), 'Search within results' (Q), and 'Recommendation tag' (Contrary authority: 39, Same motion type: 33, Frequently cited: 2, High court: 0, Last 2 years: 14, Jurisdiction: +). The main panel shows a list of recommendations, with the first one selected: '1. City of Highland Park, Michigan v. Environmental Protection Agency'. A red box highlights the 'Contrary authority' button, and a red arrow points to it. Another red arrow points to the 'Recommendations' tab in the top navigation bar.

Quickly understand your opponent's document and how to counter it:

- **Contrary Authority**
Identification to locate and analyze cases that rebut your opponent's argued positions
- **Relevant cases opposing counsel omitted from their arguments**
- **Case details, including motion type, instantly identify stage of litigation**
- **Relevant text from your opponent's document to understand context for the recommended case**

Also valuable for your own brief:

Discover and distinguish cases contrary to your position before your opposition or judge does

Quick Check Quotation Analysis

Identifies and checks quotations from cases, statutes and regulations

Mistakes can have real consequences...

The Court notes that Defendants' moving papers were laden with incorrect pin cites, misquotes from cases, misstatements of law, and misspellings of case names. Such work product concerns the Court as it creates difficulties in verifying points of law and results in the inefficient use of judicial resources.

Loyd v. Enter Net Development Corp., No. CV 05-2378 DT CW, 2005 WL 6156499, at *6 n. 3 (C.D. Cal. June 6, 2005)

Quotations (32)

Sort: Differences first Unverified citations (2) Select report

Key: differences pinche error highlights

1. Quotation from the uploaded document Differences

Bogan v. Scott-Harris
Supreme Court of the United States - March 03, 1998 - 523 U.S. 44

...then adopted the ordinance, and the mayor signed the ordinance into law, effectively eliminating plaintiff from her job. The Supreme Court did not "require an act to be legislative in both 'formal[] character' and substance in order to enjoy immunity," however, in Bogan, the Court noted that

"the budget ordinance in substance bore all the hallmarks of traditional legislation because it reflected a discretionary, policymaking decision implicating the budgetary priorities of the city and the services the city provides to its constituents."

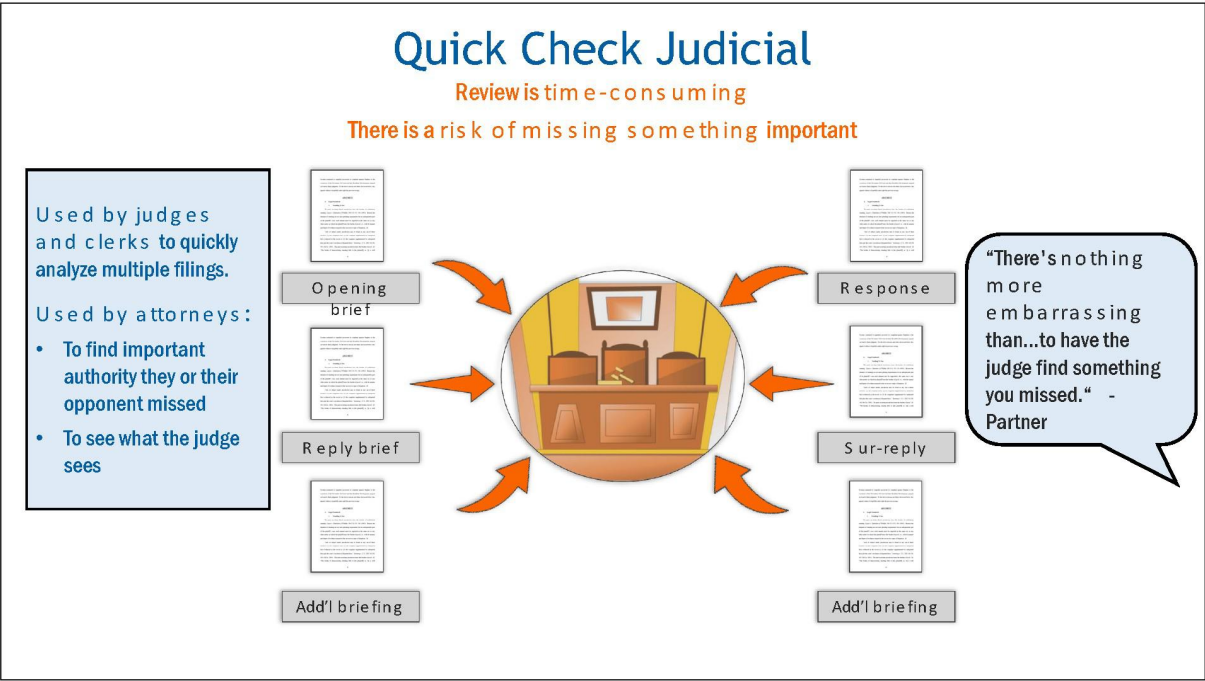
Bogan, 523 U.S. [at 52-53]. Here, the City Council Members argue that the facts of this case are [Quotation found at page 35-36] Council Members are being sued for their choices in approving the city's budget. Part of that budget eliminated funding for Plaintiff's position. Heightened pleading is also...

...however, asks us to look beyond petitioners' formal actions to consider whether the ordinance was legislative in substance. We need not determine whether the formally legislative character of petitioners' actions is alone sufficient to entitle petitioners to legislative immunity, because here

"the ordinance, in substance, bore all the hallmarks of traditional legislation. The ordinance reflected a discretionary, policymaking decision implicating the budgetary priorities of the city and the services the city provides to its constituents."

Moreover, it involved the termination of a position, which, unlike the hiring or firing of a particular employee, may have prospective implications that reach well beyond the particular occupant of the office. And the city council, in eliminating DHS, certainly governed "in a field where...

- Manage risk and maintain credibility
- Spot inaccuracies in opponents' arguments



Quick Check Judicial: Uncover relevant case law missed by parties

Issue: What is necessary for website “terms of use” to be enforceable?

An Am Law 25 firm (Appellant) sought to reverse a decision ruling that a “browsewrap” agreement was unenforceable

APPELLANT'S BRIEF ARGUES: Y E S
(T e r m s E n f o r c e a b l e)

III. The District Court Erred In Concluding That There Was No Agreement To Arbitrate

A. Browsewrap or hybrid agreements are not per se unenforceable; the enforceability of any online agreement turns on whether the user had reasonable notice of, and manifested assent to, the agreement's terms.

Nguyen argued below that the “dispositive fact” regarding the enforceability of the arbitration provision within the Terms of Use was that James & Noble “does [not] require any potential purchaser to click on the Terms of Use or to confirm acceptance of those terms in order to make a purchase...” (ER 111). In other words, Nguyen argued that browsewrap and hybrid agreements are conclusion. Even *Specht v. Netscape Comm's Corp.*, 306 F.3d 17 (2d Cir. 2002), on which Nguyen and the district court placed primary reliance, is inconsistent with such a conclusion. In *Specht*, Netscape attempted to enforce an arbitration clause contained in a software license that was available on Netscape's website. *Id.* at 20. Unlike *Specht*, the link to the license was only viewable if the user scrolled down below the button that downloaded the program and followed the instructions for downloading. *Id.* at 23. The Second Circuit held the license agreement was not enforceable because the user could (and were encouraged) to download the software before manifesting assent to any license terms, before being given a reasonable opportunity to view its terms, and before receiving any notice of the existence of any terms.” *Id.* at 30-31.

Specht cannot be read to hold that website browsewrap agreements are unenforceable per se. To the contrary, *Specht* indicates that users with notice of online terms will be bound by them. *Id.* at 31. Since *Specht* courts in the Second

- Consumer's assent to the “Terms of Use” was manifested by visiting website with the hyperlinked terms prominently placed on it
- Law does not require the consumer to click on the “Terms of Use” to be bound by them
- “Terms of Use” hyperlink was visible to the consumer within the checkout flow on the website, and did not require scrolling
- “Terms of Use” hyperlink was displayed in close proximity to fields the consumer was required to click on to continue checkout
- The parties formed a binding agreement to arbitrate

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☒ Omitted authority

Cited authority

Quotation analysis

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Case tags

☐ Frequently cited

4

☐ High court

1

☐ Last 2 years

0

Jurisdiction

Date

Previously Viewed

Documents in folders

Annotated documents

Omitted by both

Omitted by Appellant

Omitted by Appellee

Cases relevant to both sides (10)

☐ Select all items0 items selected

5. 5381 Partners LLC v. Shareasale.com, Inc.

United States District Court, E.D. New York · September 23, 2013 · Not Reported in F.Supp.2d · 2013 WL 5328324

7. Zaltz v. JDATE

United States District Court, E.D. New York · July 08, 2013 · 952 F.Supp.2d 439 · 2013 WL 3369073

Show synopsis

This case was recommended for the following headings.

Appellant: Appellant's Opening Brief.pdf

b.Nguyen, an avid Internet user, had prior experience with barnesandnoble.com.

Appellee: Appellee's Brief.pdf

iii.Electronic Browsewrap Agreements Carry Unique Attributes Requiring Judicial Analysis That Cannot Be Closely Analogized to Traditional Paper Contracts

Quick Check 1

November 2020

Quick Check recommends 5381 Partners and Zaltz as highly relevant cases that both parties missed

Omitted by both

Cases relevant to both sides (10)

☐ Select all items0 items selected

5. 5381 Partners LLC v. Shareasale.com, Inc.
United States District Court, E.D. New York · September 23, 2013 · Not Reported in F.Supp.2d · 2013 WL 5328324

7. Zaltz v. JDATE
United States District Court, E.D. New York · July 08, 2013 · 952 F.Supp.2d 439 · 2013 WL 3369073
Show synopsis
This case was recommended for the following headings.
Appellant: Appellant's Opening Brief.pdf
b.Nguyen, an avid Internet user, had prior experience with barnesandnoble.com.
Appellee: Appellee's Brief.pdf
iii.Electronic Browsewrap Agreements Carry Unique Attributes Requiring Judicial Analysis That Cannot Be Closely Analogized to Traditional Paper Contracts

Parties' Briefs		Quick Check Recommendations	
Bookstore Chain		Advertising Broker	Dating Service
Retailer's website had "Terms of Use," with the hyperlinked terms, prominently placed on it	Prominent placement of "Terms of Use"	"Merchant Agreement" at issue was readily visible on website without needing to scroll or change screens	"Terms and Conditions of Service" at issue was readily visible on website without needing to scroll or change screens away from registration screen
"Terms of Use" hyperlink was visible in close proximity to fields consumer was required to click within checkout flow	Proximity of terms to fields party was required to click on	"Merchant Agreement" appeared adjacent to activation button that party was required to click to create account	"Terms and Conditions of Service" appeared right above a button that user was required to click to move forward in registration
Retailer did not require the consumer to click to agree to the terms, nor did the consumer do so; and there was no warning that by clicking elsewhere, the consumer agreed to terms	No requirement to click on terms to continue transaction	No requirement that one click the agreement, but there was a warning near activation button stating that "By clicking . . . To Activate, you agree to the terms and conditions"	No requirement that one click the agreement, but there was a warning stating "I . . . have read and agreed to" the terms, with a checkbox users needed to click
Legal Question: Was proximity/conspicuousness of the terms alone enough to put consumer on constructive notice so that he could agree to and be bound by them?	NO Warning to User YES Warning to User	Court found: Party was put on constructive notice of the terms and agreed to them by clicking; party was, therefore, bound to those terms	Court found: Party was put on constructive notice of the terms and agreed to them by clicking; party was, therefore, bound to those terms
Question as to whether party was bound to terms			

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NGUYEN v. BARNES & NOBLE INC.
Cite as 763 F.3d 1171 (9th Cir. 2014)

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ty to the Department such that the actions of Sheriff Stull (not himself an individual defendant) or others below him could result in *Monsell* liability for the County is a factual determination that we do not make. But since the order granting summary judgment was premised on the erroneous belief that Thomas had presented no evidence to support the possibility of *Monsell* liability under a final policymaker theory, it was in error. See, e.g., *Ulrich v. City & Cnty. of S.F.*, 308 F.3d 968, 986 (9th Cir. 2002) (reversing grant of summary judgment to municipal defendant and remanding for consideration of whether there was a delegation of final policymaking authority). Thus, this too will require re-evaluation on remand.

Finally, defendants cross-appeal the lower court's denial of attorneys' fees. In light of the foregoing, this cross-appeal is now moot.¹

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.



Kevin Khon NGUYEN, an individual, on behalf of himself and all others similarly situated, Plaintiff-Appellee,

v.

BARNES & NOBLE INC.,
Defendant-Appellant.
No. 12-56628.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted May 16, 2014.
Filed Aug. 18, 2014.

Background: Consumer, whose online order of tablet computer at discounted price

1. It is unclear whether defendants are also cross-appealing the district court's determination that the labor union local had standing,

during liquidation period was cancelled, brought putative class action in state court against retailer, alleging deceptive practices and false advertising. Following removal to federal court, the United States District Court for the Central District of California, Josephine L. Staton, J., 2012 WL 2711081, denied retailer's motion to compel arbitration, and retailer appealed.

Holdings: The Court of Appeals, Noonan, Circuit Judge, held that:

(1) consumer did not have constructive notice of retailer's terms of use;

(2) doctrine of direct benefits estoppel did not apply; and

(3) consumer's reliance on choice of law provision was not a direct benefit, as would warrant equitably estopping him from avoiding arbitration.

Affirmed.

1. **Alternative Dispute Resolution**
©213(5)

Court of Appeals reviews the denial of a motion to compel arbitration de novo.

2. **Alternative Dispute Resolution**
©213(5)

When reviewing a district court's denial of a motion to compel arbitration, underlying factual findings are reviewed for clear error, while the interpretation and meaning of contract provisions are reviewed de novo.

3. **Alternative Dispute Resolution** ©199, 200

The Federal Arbitration Act (FAA) limits a district court's role to determining

but to the extent that they are, the district court's finding of standing is affirmed.

The 9th Circuit Court relied on both cases that Quick Check Judicial recommended to support its decision affirming the district court's holding that the agreement was not enforceable, basing their ruling on distinction that both of those cases involved "warnings", whereas this case did not

But the proximity or conspicuousness of the hyperlink alone is not enough to give rise to constructive notice, and Barnes & Noble directs us to no case law that supports this proposition.¹

1. Indeed, in cases where courts have relied on the proximity of the hyperlink to enforce a browsewrap agreement, the websites at issue have also included something more to capture the user's attention and secure her assent. See, e.g., *5381 Partners LLC v. Sharesale.com, Inc.*, No. 12-CV-4263 JPB AKT, 2013 WL 5328324, at *7 (E.D.N.Y. Sept. 23, 2013) (in addition to hyperlink that appeared adjacent to the activation button users had to click on, website also contained a text warning near the button that stated "By clicking and making a request to Activate, you agree to the terms and conditions in the [agreement]"); *Zaltz*, 952 F.Supp.2d at 451-52, (users required to check box confirming that they had reviewed and agreed to website's Terms and Conditions, even though hyperlink to Terms and Conditions was located on the same screen as the button users had to click on to complete registration).

November 2020

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